

(2012) 11 KL CK 0222

In the High Court Of Kerala

Case No : O.P. No's. 6533, 6773, etc. of 2002 and Connected Cases

Haneefa

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 01-11-2012

Acts Referred:

Coal Mines Provident Fund and Miscellaneous Provisions Act, 1948 — Section 2(b)
Constitution of India, 1950 — Article 14, 141, 16, 16(1), 233
Representation of the People Act, 1951 — Section 11(2), 123(5)

Citation : (2012) 4 KLJ 673 : (2012) 4 KLT 583 : (2013) LabIC 823

Hon'ble Judges : P.R. Ramachandra Menon, J;K. Harilal, J;Antony Dominic, J

Bench : Full Bench

Advocate : P. Ravindran, S.P. Aravindakshan Pillay, N. Santha, Reshmi G. Nair, V.V. Varghese, S. Ramesh Babu, Anil Sivaraman and Anu Sivaraman, for the Appellant; K.R.B. Kaimal, O.V. Radhakrishnan, M. Pathrose Mathai and Grashious Kuriakose (Sr. Advocates), C.S. Manilal Sr. Government Pleader, Saji Varghese, Shiju Varghese, B. Unnikrishna Kaimal, Pramod Abraham, C. Khalid, N. Gopinatha Panicker, P. Viswambaran, R.O. Muhammed Shemeem, V.B. Unniraj, R.S. Geetha, P. Anitha, K.J. Kuriachan, N.T. Nandakumar (Paravur) and S. Sudheesh Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Antony Dominic, J.—Petitioners in these Original Petitions are officers in the cadre of District and Sessions Judges and the main question raised is whether the Kerala State Higher Judicial Service Special Rules (hereinafter referred to as "the Special Rules") provide any separate quota for direct recruitment from the Bar. When these cases were heard, petitioners relied on a Division Bench judgment of this Court in O.P.No. 1790 of 1985 and connected cases where it was held that the Special Rules did not provide any quota for direct recruitment but only provided the proportion to be maintained if appointment is made by direct recruitment. The learned Judge considered the matter and in view of the Apex Court judgments in O.P. Singla and Another Vs. Union of India (UOI) and Others, , State of Kerala Vs. Smt. A. Lakshmikutty and others, and P.S.

Gopinathan Vs. State of Kerala and Others, , doubted the correctness of the Division Bench judgment. Accordingly, by order dated 2.8.2011, these cases were referred to a Division Bench. Thereupon, these cases were considered by a Division Bench, which also agreed with the view taken by the learned single Judge and by order dated 2-8-2012, referred these cases to be heard by a Full Bench. It was accordingly these cases were posted for hearing before us.

2. By this common judgment, we are disposing of all these cases and for convenience, unless otherwise specifically stated, references made in this judgment are to the facts pleaded and the documents produced in O.P. No. 6533 of 2002.

3. Petitioners in these cases were members of the Kerala Judicial Service, who are governed by the Kerala Judicial Service Rules, 1991. While they were working in the Category 1 posts of Subordinate Judges/Chief Judicial Magistrates, the High Court vide its letter No. B1 - 55367/2000, dated 20.1.2001, recommended the approval of a new panel of 15 Sub Judges/Chief Judicial Magistrates for appointment as District and Sessions Judges in the Kerala State Higher Judicial Service.

4. Accordingly, in exercise of the powers under Art. 233 of the Constitution of India, the Governor approved the panel for appointment as and when vacancies arise, as per Ext. P1 notification dated 16.2.2001, the relevant part of which reads as under;

As the panel of Sub Judges/Chief Judicial Magistrates for appointment as District, approved as per G.O. read above has exhausted, the High Court of Kerala has recommended the approval of a new panel of Sub Judges/Chief Judicial Magistrates for appointment as District Judges in the Kerala State Higher Judicial Services.

In the circumstance, the Governor of Kerala is pleased to approve the following panel of Chief Judicial Magistrates/Sub Judges for appointment as District and Sessions Judges in the Kerala State Higher Judicial Service, without prejudice to the claims of the candidates to be recruited from the Bar as provided in rule 2(b) of the Kerala State Higher Judicial Service Rules, 1961 and also subject to the decision of Honourable Supreme Court in the Appeal Petitions against judgment in O.P. 16199/94-C and O.P. No. 16200/94-C.

5. In the panel thus approved for appointment, the petitioner in O.P.No. 6533 of 2002 was included at serial number 10. Approval of the panel was notified in the Gazette as per Ext. P2, G.O. (MS) 32/2001 dated 16.2.2001, the relevant part of which, reads thus;

S.R.O. No. 2001.-- In exercise of the powers conferred by clause (1) of Art. 233 of the Constitution of India, the Governor of Kerala, on the recommendation of High Court of Kerala, is pleased to approve the following panel of Chief Judicial Magistrates/Sub Judges for appointment as District & Sessions Judges and for

their appointment as District & Sessions Judges in the Kerala State Higher Judicial Service as and when vacancies arise without prejudice to the claims of candidates to be recruited from the Bar to satisfy the provisions under R.2(b) of the Kerala State Higher Judicial Service Rules, 1961 and also subject to the decision of Hon"ble Supreme Court in the Appeal Petitions against judgment in O.P.No. 16199/ 94-C and O.P.No. 16200/94-C.

6. In pursuance to the above, by Ext. P3 order dated 4.9.2001, petitioner in O.P.No. 6533 of 2002 was appointed as the Presiding Officer, Labour Court, Kollam. While he was continuing in that post, in pursuance to Ext. P9 notification dated 28.10.2000 inviting applications to the post of District and Sessions Judges by direct recruitment from the Bar, process of selection was completed and candidates were recruited. Accordingly, by G.O. (Ms) No. 201/2001/Home dated 29.10.2001, issued in exercise of powers under Art. 233 of the Constitution of India, respondents 3 to 10 were appointed as District and Sessions Judges. Thereafter the High Court issued Ext. P6 order dated 26.11.2001, posting the new appointees to different vacancies. By this order, the petitioner in O.P.No. 6533 of 2002 was reverted and was posted as Sub Judge, Palai. Subsequently, when Fast Track Courts were established and posts were created, by Ext. P7 order of the High Court dated 14.2.2002, petitioner was reposted as Additional District and Sessions Judge (Ad hoc), Fast Track Court, Kottayam II and was ordered to take charge with effect from 16.2.2002. Since then he is continuing as a District and Sessions Judge.

7. The petitioner in O.P. No. 6773 of 2002 was also included in the aforesaid panel approved by the Governor at serial No. 8. By proceedings dated 07.06.2001, she was posted at the Motor Accident Claims Tribunal, Ottappalam. When the direct recruits joined service, she was also reverted and was posted as Sub Judge, Kochi, as per High Court order dated 26.11.2001. Thereafter, she was reposted as District and Sessions Judge as per order dated 14.2.2002.

8. O.P.No. 6987 of 2002 has been filed by persons at serial Nos. 11 and 13 in the panel approved by the Governor. They contend that they were appointed on 16.2.2001 and that since the direct recruits were appointed only on 03.10.2001, they should get seniority from the date of their appointment, viz., 16.02.2001.

9. The petitioner in O.P. No. 1536 of 2003 was at serial No. 15 of Ext. P1 panel and he contends that on account of the appointment of the direct recruits, though he was appointed by Exts. P1 & 2 referred to above, his posting got delayed and that he was eventually posted only by order dated 22.5.2002. He also contends that he is entitled to seniority from 16.2.2001.

10. All these petitioners are contending that the provision in the notifications and the High Court order issued approving the panel, appointing and posting them without prejudice to the claims of the direct recruits is illegal for the reason that the Special Rules do not contain any quota for direct recruitment. To substantiate this contention, they relied on the Special Rules and also the Division Bench

judgment of this Court in O.P.No. 1790 of 1985 and connected cases. It was also argued that in any case, in view of Rule 6 of the Special Rules, they are entitled to seniority from 16.2.2001, when they were first appointed into the service.

11. On behalf of the High Court, Counter Affidavit has been filed contending that as per the Special Rules, as it stood prior to its amendment in 2008, in the category of District and Sessions Judges, including Additional District and Sessions Judges, appointment shall be made by transfer from the category of Subordinate Judges/Chief Judicial Magistrates and by direct recruitment from the Bar, provided that one third of the permanent posts, (including Selection Grade District and Sessions Judges) shall be filled or reserved to be filled by direct recruitment from the Bar. It is stated that, as on 28.10.2000, the total number of posts was 68 and that though there should have been 22 direct recruits in service, there were only 14 and therefore, notification dated 28.10.2000 was issued inviting applications to the 8 vacancies from qualified candidates.

12. According to them, pending the direct recruitment and without prejudice to the claims of the direct recruits, the panel which was forwarded to the Governor was approved for appointment as per Ext. P1 notification. It is stated that thereafter, the High Court issued orders posting the officers included at serial Nos. 1 to 10 of Ext. P1 in the cadre of District and Sessions Judges on or before 5.9.2001 and that all the appointments and postings were against the existing vacancies, including the 8 vacancies notified on 28.10.2000 for direct recruitment and that it was without prejudice to the claims of the direct recruits to be appointed against the 8 vacancies.

13. It is also stated that when these persons were continuing as District and Sessions Judges, the direct recruits were selected and were appointed by Government Order dated 29.10.2001 and that at that time there were only 5 open vacancies and therefore the junior most three among them had to be reverted to accommodate three direct recruits in the posts available to them. Accordingly, serial Nos. 8 to 10, being the junior most, were reverted and 8 direct recruits were appointed against the then existing vacancies. Later the three reverted officers, including the petitioners in O.P.Nos. 6533 & 6773 of 2002, were given posting and thereafter, by order dated 14.2.2002, the petitioners were also posted as District and Sessions Judges.

14. The directly recruited District and Sessions Judges, who are the party respondents in these cases, have also filed their counter affidavits supporting the contentions of the High Court and arguing that their appointment was against the quota earmarked for direct recruitment. Therefore, according to them, they were appointed against their quota and the petitioners who were appointed against those posts on adhoc basis were rightly reverted to accommodate them.

15. Reference to the Full Bench is to consider the correctness of the judgment of the Division Bench in O.P.No. 1790 of 1985 and connected cases. Before we examine the correctness of the principles laid down by the Division Bench, it is

necessary to refer to the Constitutional and statutory provisions governing the higher judicial service in the State.

16. Prior to the amendment of the Special Rules in 2008, the higher judicial service in the State consisted of two categories, viz, (1) Selection Grade District and Sessions Judge and (2) District and Sessions Judges (including Additional District and Sessions Judges). Rule 2 of the Special Rules prescribes the method of appointment and, it being relevant, is extracted for reference;

Method of appointment- (a) Appointment to category (1) shall be made by the High Court by promotion from category (2).

(b) Appointment to category (2) shall be made by transfer from the category I Subordinate Judges/C.J.M.s. of the Kerala Judicial Service or by direct recruitment from the Bar, provided that the number of posts in category (2) to be filled up or reserved to be filled up by direct recruitment shall be one-third of the permanent posts in categories (1) and (2) taken together.

(c)...

17. Article 233 of the Constitution provides that appointments of persons to be, and the posting and promotion of, District Judges in any State shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction in relation to such State. However, R. 5A of the Special Rules providing for posting and transfers, mandates that all postings and transfers of persons appointed shall be made by the High Court. R.6 states that seniority of a person appointed to posts to categories (1) or (2), shall be determined with reference to the order of his first appointment to the category, unless he has been reduced to a lower rank as punishment.

18. The dispute that was eventually considered in O.P.No. 1790 of 1985 and connected cases was that when these rules were prevailing, notification dated 24.09.1983 was issued by the State inviting applications for appointment to the post of District and Sessions Judges by direct recruitment. Certain litigations resulted in delay in completing the process of appointment and in the mean while, some subordinate Judges were decided to be appointed as District and Sessions Judges. Thereupon, candidates for direct recruitment filed Original Petitions contending that the proposal to appoint the in-service candidates, before appointing them, was illegal. Considering the rival contentions, in the judgment, one of the points framed by the Division Bench for consideration was;

Whether under the Kerala State Higher Judicial Service Special Rules a quota is prescribed for direct recruitment from the Bar?

19. This question was examined in the light of the Constitutional provisions, Special Rules and the principles laid down in the judgments rendered by the Apex Court, including the judgment in O.P. Singla and Another Vs. Union of India (UOI) and Others, . On a detailed examination of the various aspects of the matter, the Division Bench held in paragraphs 15 to 17 and 30 of the judgment

thus;

15. Under the Kerala Rules appointments are to be made by transfer from the category of Subordinate Judges or by direct recruitment from the Bar. Only the upper limit of the number of direct recruits is provided in R.2(b), thereby indicating that there is no such limit for appointments by transfer. There is no rule in the Kerala Rules similar to R.8(2) of the Delhi Rules referred to in O.P. Singla and Another Vs. Union of India (UOI) and Others, , for rotation of vacancies between direct recruits and promotees.

16. This will indicate that if it became impracticable to fill up one-third of the permanent posts by direct recruitment, the State was free to fill the posts by promotion, if such filling up of the vacancies was administratively necessary and could not wait. R.2 of the Kerala Rules must, therefore, be understood in a realistic manner and not in an abstractly absolute way. If the appointments by promotion had been deferred, the Higher Judicial Service of the State would have suffered leading to grave injury to the judicial administration of the State. The public interest demanded that the judicial administration did not suffer on account of non-availability of suitable candidates to be appointed by direct recruitment when competent officers fit to shoulder the responsibility were available in the Subordinate Judicial Service. It is pertinent to note that the promotions were not made in a casual manner, but after following the prescribed procedure for promotion by assessment of their judgments and confidential records. Promotions were made in a regular manner. It is also not possible to prepare a long list of candidates to be directly recruited and keep it ready so that whenever vacancies arise they may also be appointed simultaneously with the promotees. In case a list of candidates is prepared in advance, that will prevent direct recruitment for a number of years, thereby spoiling the chances of new candidates who may acquire qualification in the meanwhile. Therefore, direct recruitment can be made only for the available vacancies or for vacancies to be anticipated in the near future. District & Sessions Judge is the head of the Judicial administration in every district. That post cannot be indefinitely left vacant. As and when vacancies arise the post will have to be filled up in order to ensure proper administration of justice. Therefore, appointments to that post cannot be deferred till suitable direct recruit candidates are available.

17. Reading R. 2(b) of the Kerala Rules unaided or uninfluenced by the interpretation placed on other statutes by different courts and in the context of the other rules, especially R.6 of the Kerala Rules, it appears that it merely provides that one-third of the permanent posts in categories (1) and (2) are to be filled up or reserved to be filled up by direct recruitment. From this, it is difficult to contend that there is any quota fixing one-third quota to Bar recruits. The rule does not say that direct recruits must for each year or during any other specific period be 1/3rd of the number of promotees. Essentially that sub-rule puts a ceiling on the number of Bar recruits and does not fix any quota for them. The working of the rule in this State would indicate that only for the recruitment

in which the petitioners were recruited, any substantial controversy regarding seniority arose in this State. There were earlier recruitments and later recruitments for which there was no such controversy. Only due to certain peculiar circumstances such a controversy arose for this recruitment. The framers of the rules thought that the chances of the promotees whose knowledge and experience were also necessary to be retained for the better administration of judicial service, should not be affected by R.2(b) of the Kerala Rules. In *O.P. Singla and Another Vs. Union of India (UOI) and Others*, , the Supreme Court read R.7 and R.8 of the Delhi Rules as part of an integral scheme and did not read R.7 in isolation. Therefore, even though the Court was inclined to hold that R.7 read in isolation did not prescribe a quota, the Court read R.7 along with R.8 and held that the overall scheme of the rules was that 1/3rd of the substantive posts in the service must be reserved for direct recruits. If R.7 was standing by itself simpliciter, no problem would have arisen. However, sub-rule (2) of R.8 stipulated that seniority of direct recruits vis-a-vis promotees shall be determined in the order of rotation of vacancies between direct recruits and promotees based on quotas of vacancies reserved for both categories by R.7. From this, the Supreme Court held that the makers of the rule assumed a factual position that quotas of vacancies have been reserved for both categories by R.7, although R.7 did not reserve any quota for either of the categories. R.7 had only provided for ceiling of direct recruits.

30. However, the rule making authorities in Kerala did not fix any specific quota between direct recruits and promotees for appointment as District Judges. If the intention was to grant specific quota to the candidates from these two sources, the rule making authority would have specifically provided for that at least when it considered the amendment of sub-rule (b) of R.2 in 1983 when most of the above said judgments had already been rendered. There was no difficulty to provide specific quota for direct recruits and promotees in the Kerala Rules also, if that was the real intention of the ruling making authority. On the other hand, the intention of the rule making authority is clear from incorporating R.6 relating to seniority in the Special Rules itself instead of leaving that question to the General Rules and specifying that seniority shall be determined with reference to the date of first appointment. That would mean that the authority did not intend to give any specific quota either to the promotees or to the direct recruits. Accordingly, we hold that under the Kerala State Higher Judicial Service (Special) Rules no quota is prescribed for direct recruitment from the Bar. However, this does not mean that the provision contained in R.2(b) that the number of posts to be filled up or reserved to be filled up by direct recruitment shall be one-third of the permanent posts, has no effect. The appointing authority will have ensure this and every effort should be made to fill up one-third of the permanent posts of Direct Judges by direct recruitment.

20. Before us, while the petitioners strenuously contended for endorsing the principles laid down by the Division Bench, the respondents unanimously criticised the judgment as one rendered misreading not only the constitutional

and statutory provisions but also the principles laid down in the Apex Court judgments referred to in the judgment itself.

21. We have given our thoughtful consideration to the contentions urged by the Counsel for the parties.

22. In these cases, we are concerned with the Special Rules governing the Higher Judicial Service in the State, as it stood prior to its amendment in 2008. As per R. 2(b) of the Special Rules, there are two methods of appointment to the posts in category (2), District and Sessions Judges, which includes Additional District and Sessions Judges also. The first method prescribed is "appointment by transfer" from Sub Judges / Chief Judicial Magistrates who are members of the Kerala Judicial Service. The second method prescribed is "direct recruitment" from the Bar. This part of the rule is followed by a proviso, which states that the number of posts "to be filled up or reserved to be filled up" by direct recruitment shall be one third of the permanent posts in the categories of Selection Grade District and Sessions Judges and District and Sessions Judges (including Additional District and Sessions Judges). The former part of the Rule providing for "appointment by transfer" and the latter part providing for "direct recruitment" are separated by the word "or". Further the Special Rules do not contain any rota provision, These, coupled with the introduction of a clear quota provision when the Rules were amended in 2008, according to the petitioners, make it evident that the both parts of the rule are to be read conjunctively providing only an option to the appointing authority and is not a quota for direct recruitment from the Bar.

23. If we are to read this provision of the Special Rules in the manner as canvassed by the petitioners and the judgment in O.P.No. 1790 of 1985 is accepted as correctly laying down the legal position, there may not be much difficulty in upholding the petitioners' plea that the Special Rules do not provide any quota for direct recruitment. However, in our considered view, unless we do violence to the language of the Rule and ignore the object that is sought to be achieved by it, such a contention cannot be accepted.

24. It is too well settled a principle that where a statute is to be interpreted, courts should interpret the provisions in such a manner that it advances the object that is sought to be achieved. Therefore, we should look at the Rule and if the Rule, as it stands, is capable of giving effect to the intention of its framers, court should be guided by nothing else and would look for precedents only to substantiate its conclusions on that basis.

25. We shall now examine whether the Special Rules provide a quota for direct recruitment from the Bar. As we have already noticed, R.2(b) of the Special Rules provide two methods for filling up the posts in the category of District and Session Judges. As far the latter part of the rule prescribing direct recruitment is concerned, the language employed is positive and mandatory and by virtue of the proviso incorporated therein, the total number of posts to be filled or

reserved to be filled by direct recruitment shall be one third of the permanent posts in the categories of Selection Grade District and Sessions Judge and District and Sessions Judge including Additional District and Sessions Judge. Thus, the rule making authority consciously prescribed two methods for filling up the posts viz., (1) appointment by transfer from Subordinate Judges/Chief Judicial Magistrates and (2) by direct recruitment from the Bar. Such a statutory prescription, that too, in unambiguous, mandatory and positive language, in our view, spells out a quota for direct recruitment.

26. Further, the Rule provides that the posts "to be filled up or reserved to be filled up" by direct recruitment shall be one third of the cadre strength. According to us, the expression "to be filled up" indicates that the rule making authority intended that one third of the posts shall be filled up by direct recruitment. Similarly the expression, "reserved to be filled up" has been used with a purpose and an object, which cannot be ignored. In our opinion, the words "reserved to be filled up" means that if at any time there is dearth of officers in the one third quota for direct recruitment and the posts remain unfilled, either fully or partially, sufficient number of posts shall be reserved to be filled by direct recruitment. In other words, these expressions in R.2(b) of the Special Rules manifests that the posts which are to be filled by direct recruitment quota should be filled up by that method alone.

27. Several judgments of the Apex Court were relied on by the Division Bench, which were also referred to us by both sides. Among the judgments that were relied on by the Division Bench while disposing of O.P.No. 1790 of 1985 and connected cases, the Apex Court judgment in O.P. Singla and Another Vs. Union of India (UOI) and Others, is the most relevant one. We are of the view that the principles laid down in this judgment were wrongly applied by the Division Bench and in fact the reasoning of the Apex Court supports our conclusion that R.2(b) of the Special Rules provide a quota for direct recruitment.

28. O.P. Singla's case arose out of a seniority dispute between direct recruits and promotees in the Delhi Higher Judicial Service, who were governed by the Delhi Higher Judicial Service Rules 1970. In that judgment, the Apex Court held that R. 7 of the Rules did not prescribe any quota for direct recruitment. After holding so, the provisions of R.8 were examined and in view of the rotation of vacancies provided therein, the Court held that the overall scheme of the Rules is that one third of the substantive posts must be reserved for direct recruitment.

29. For a better understanding of the principles laid down by the Apex Court, it is necessary to have a closer perusal of the relevant rules and the principles laid down in the judgment. Rules 7 and 8 of the Rules read as under;

Rule 7. Regular Recruitment-- Recruitment after the initial recruitment shall be made:

(a) by promotion on the basis of selection from members of the Delhi Judicial Service, who have completed not less than 10 years of service in the Delhi

Judicial Service;

(b) by direct recruitment from the Bar:

Provided that not more than one-third of the substantive posts in the Service shall be held by direct recruits.

8. (1) The inter se seniority of members of the Delhi Judicial Service promoted to the Service shall be the same as in the Delhi Judicial Service.

(2) The seniority of direct recruits vis-a-vis promotees shall be determined in the order of rotation of vacancies between the direct recruits and promotees based on the quotas of vacancies reserved for both categories by Rule 7 provided that the first available vacancy will be filled by a direct recruit and the next two vacancies by promotees and so on.

30. Analyzing these Rules, the Apex Court held thus;

16. Logically, we must begin this inquiry with the question as to the interpretation of the proviso to Rule 7. Does that proviso prescribe a quota or does it merely provide for a ceiling? In other words, does the proviso require that, at any given point of time, one-third of the substantive posts in the Service shall be reserved for direct recruits or does it only stipulate that the posts held by direct recruits shall not be more than one-third of the total number of substantive posts in the Service? The proviso reads thus:

Provided that not more than one-third of the substantive posts in the Service shall be held by direct recruits.

This language is more consistent with the contention of the promotees that the proviso merely prescribes, by way of imposing a ceiling, that the direct recruits shall not hold more than one-third of the substantive posts. Experience shows that any provision which is intended to prescribe a quota, generally provides that, for example, "one-third of the substantive posts shall be filled in by direct recruitment". A quota provision does not use the negative language, as the proviso in the instant case does, that "not more than" one-third of the substantive posts in the Service shall be held by direct recruits.

17. If the matter were to rest with the proviso, its interpretation would have to be that it does not prescribe a quota for direct recruits: it only enables the appointment of direct recruits to substantive posts so that, they shall not hold more than one-third of the total number of substantive posts in the Service. However, it is well recognised that, when a rule or a section is a part of an integral scheme, it should not be considered or construed in isolation. One must have regard to the scheme of the fasciculus of the relevant rules or sections in order to determine the true meaning of any one or more of them. An isolated consideration of a provision leads to the risk of some other inter-related provision becoming otiose or devoid of meaning. That makes it necessary to call attention to the very next rule, namely, R.8. It provides by clause 2 that:

The seniority of direct recruits vis-a-vis promotees shall be determined in the order of rotation of vacancies between the direct recruits and promotees based on the quotas of vacancies reserved for both categories by R.7 provided that the first available vacancy will be filled by a direct recruit and the next two vacancies by promotees and so on.

This provision leaves no doubt that the overall scheme of the rules and the true intendment of the proviso to R.7 is that one-third of the substantive posts in the Service must be reserved for direct recruits. Otherwise, there would neither be any occasion nor any justification for rotating vacancies between direct recruits and promotees. R.8(2), which deals with fixation of seniority amongst the members of the Service, provides, as it were, a key to the interpretation of the" proviso to R.7 by saying that the proviso prescribes "quotas" and reserves vacancies for both categories. The language of the proviso to R.7 is certainly not felicitous and is unconventional if its intention was to prescribe a quota for direct recruits. But the proviso, as I have stated earlier, must be read along with R.8(2) since the two provisions are interrelated. Their combined reading yields but one result, that the proviso prescribes a quota of one-third for direct recruits.

31. The proviso to R.7 of the Delhi Rules did not, unlike the proviso to R.2(b) of the Kerala Special Rules, prescribe that one third of the posts shall be filled up or reserved to be filled up by direct recruitment. Instead, the proviso only prescribed a ceiling that not more than one third of the substantive posts shall be held by direct recruits. It was taking into account the manner in which the rule has been framed and negative language used, that the Apex Court held that R.7 did not prescribe any quota for direct recruitment. Thereafter, the Court examined R.8 and the rotation of vacancies provided therein and held that the overall scheme of the rules and the true intendment of the proviso to R.7 was that one third of the substantive posts in the service must be reserved for direct recruitment. From this judgment it is clear that;

1) if the language of R.7 were positive, without reference to R.8, the Court would have held that it prescribed a quota for direct recruitment.

2) that according to the Apex Court, if R.7 were intended to operate as a quota, it would have been in positive language, which is stated to be the normal practice.

32. As against the above factual position, R.2(b) of the Special Rules is couched in positive and mandatory language. The proviso also prescribes that one third of the posts shall be filled up by direct recruitment. Further, the Rule also provides that one third of the posts shall be "filled up or reserved to be filled up" by direct recruitment. Therefore, R.2(b) of the Special Rules, in mandatory terms require the appointing authority to maintain a quota for direct recruitment from the Bar and that one third of the posts shall be filled up or reserved to be filled up by direct recruitment from the Bar.

33. Further, we also notice that in its judgment in State of Kerala Vs. Smt. A.

Lakshmikutty and others, , after making reference to a statement filed by Registrar of this Court, the Apex Court held thus;

43. At our request, the Registrar of the High Court has furnished us with requisite information on the strength of cadre of District Judges. From the note prepared by him, the picture that emerges is this. Under the proviso to R.2(b) of the Kerala State Higher Judicial Service Rules, one-third of the permanent posts of District Judges including Selection Grade District Judges has to be filled up or reserved to be filled up by direct recruitment. The number of permanent places of District Judges is 29. There is only one District Judge at present who is a direct recruit. The number of posts has increased with the creation of three posts of Motor Accidents Claims Tribunals at Palghat, Manjeri and Tellichery which started functioning from June 1, 1981, and became permanent by June 1, 1986. Thus the number of permanent posts of District Judges has gone up to 32. Therefore, there arises the need for filling up ten posts of District Judges by direct recruitment. Even after the filling up of five vacancies with which we are concerned, there would still remain scope for selecting four more District Judges from the Bar. With the elevation of Sri K.T. Thomas and Sri Sreedharan who were both directly recruited from the Bar, there would be need for filling up the posts of District Judges vacated by them. Due to the constitutional impasse created, the matter is at a standstill.

34. In the paragraph extracted above, what is relevant to be noted is that after referring to R.2(b) of the Special Rules, the Apex Court held that one third of the permanent posts of District and Sessions Judges including Selection Grade District Judges have to be filled up by direct recruitment.

35. Subsequently, in its judgment in P.S. Gopinathan Vs. State of Kerala and Others, , the Apex Court held thus;

31. The appointment order of the appellant was issued on 14.1.1992. In pursuance thereof and the decision taken by the High Court, a posting order was issued on 29.2.1992. The posting order clearly specified that the appellant was being posted as Additional District Judge on temporary basis without probationary rights in the category of District Judges and his seniority in the category of District Judges will be determined on a later date. The appellant took charge of the post on 7.3.1992 without any demur or objection. When the appellant was continuing on the post, Respondents 3 to 5 were appointed as District and Sessions Judges in the quota of direct recruits. Later on, a fresh panel for the transfer/promotion was prepared by the High Court which was approved by the Governor and a fresh appointment order issued on 15-7-1992 without prejudice to the claim of the candidates recruited from the Bar.

Here again, while dealing with a dispute among officers governed by the Special Rules, the provision of the Rule was understood as providing a quota for direct recruitment.

36. While the judgments in the cases of Lakshmikutty and P.S. Gopinathan were

relied on by the respondents to contend that in these judgments, the Apex Court has accepted that R.2(b) of the Special Rules prescribed a quota for direct recruitment from the Bar, the Counsel for the petitioners contended that what is stated in the aforesaid paragraphs are only "obiter dicta" and are not the ratio decidendi of the judgments, to be followed by this Court as a binding precedent under Art. 141 of the Constitution of India. To buttress their respective contentions, both sides relied on various judgments of the Apex Court and we shall make a brief reference to those judgments.

37. In *Municipal Corporation of Delhi Vs. Gurnam Kaur*, , after referring to *Salmond on Jurisprudence*, the Apex Court held that pronouncements of law, which are not part of the ratio decidendi are classed as obiter dicta and are not authoritative. In *Arnit Das Vs. State of Bihar*, the principle was explained thus:

20. A decision not expressed, not accompanied by reasons and not proceeding on a conscious consideration of an issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Art, 141. That which has escaped in the judgment is not the ratio decidendi. This is the rule of sub silentio, in the technical sense when a particular point of law was not consciously determined.

38. Again the principle of obiter dicta was explained by the Apex Court in *Director* as an observation by the Court on a legal question suggested in a case before it but not arising in such a manner as to require a decision. It was held that such an obiter may not have a binding precedent as the observation was unnecessary for the decision pronounced. However, the Court went on to clarify that even though an obiter may not have a binding effect as a precedent, it cannot be denied that it is of considerable weight.

39. The binding nature of an obiter dictum was explained by the Apex Court, again in its judgment in *The Oriental Insurance Company Limited Vs. Meena Variyal and Others*, and it was held that;

An obiter dictum of this Court may be binding only on the High Court in the absence of a direct pronouncement on that question elsewhere by this Court. But as far as this Court is concerned, though not binding, it does have a clear persuasive authority.

40. These principles were again considered by the Apex Court in *Arun Kumar Aggarwal Vs. State of Madhya Pradesh and Others*, , where after making extensive reference to authoritative texts and precedents, it was concluded thus;

(31) In view of the above, it is well settled that obiter dictum is a mere observation or remark made by the court by way of aside while deciding the actual issue before it. The mere casual statement or observation which is not relevant, pertinent or essential to decide the issue in hand does not form the part of the judgment of the Court and have no authoritative value. The expression of the personal view or opinion of the Judge is just a casual remark made whilst deviating from answering the actual issues pending before the Court. These

casual remarks are considered or treated as beyond the ambit of the authoritative or operative part of the judgment.

41. The question that we are concerned is whether, in view of the aforesaid principles, what is held in the cases of Lakshmikutty and P.S. Gopinathan are only obiter. As far as Lakshmikutty's case is concerned, it is evident from the judgment itself that the observations were made on the basis of a statement filed by the Registrar of this Court indicating the cadre strength of District Judges. After examining the statistics thus furnished, Apex Court concluded that in view of R.2(b) of the Special Rules, one third of the posts shall be filled or reserved to be filled by direct recruitment. Such a finding in the judgment, which considered the question of direct recruitment of District Judges, cannot be ignored by this Court as an unnecessary observation and therefore, mere obiter dicta.

42. Coming to the criticism that paragraph 31 in P.S. Gopinathan's case is also an obiter and hence is liable to be ignored as not binding on this Court; we confess our inability to accept such an argument. This was also a case involving a dispute among officers governed by the Special Rules and the judgment shows that the Apex Court considered the statutory position as reflected in the Special Rules and thereafter concluded that the respondents therein were recruited in the direct recruitment quota. In any case, as held by the Apex Court itself, in the absence of any pronouncement to the contrary, we would respectfully follow the manner in which the rule was understood by the Apex Court as is reflected in these judgments.

43. Yet another contention that was urged by the counsel for the petitioners was that the Special Rules do not provide any rota regulating the distribution of posts to the two different sources and that if the rules were to provide a quota as canvassed, the rule would have provided for rota also. Counsel also referred to certain other special rules in the State to support his contention that other special rules providing for quota for recruitment from different sources contained provisions for rotation of the posts/vacancies. We do not find any substance in this contention also, because, according to us, it is not essential that a quota rule should always contain a rota rule also and any detailed discussion on this aspect of the matter is unnecessary because, this issue is covered by a binding precedent.

44. We shall in this context refer to the Apex Court judgment in AIR 1977 251 (SC) , where it was held that;

The attack based on Art. 16 that the roster method of filling up posts is integral to the quota system is baseless. Quota without rota is also reasonable and constitutional as much as quota plus rota. The choice, both being permissible and fair, is left to the administration, the Court not ferreting or dissecting to detect deadly traces of discrimination or unreasonableness.

This issue was further explained thus;

29. Now we move on to the more thorny question of quota and rota. Shri Garg urges that the rotational mechanics is implicit in the quota system and the two cannot be delinked. To shore up this submission he relies on what he propounds as the correct command of the rule of "quota". In his view, 1:1 simply means one direct recruit or promotee followed, vacancy by vacancy, by the other. To maintain the proportion in compliance with the quota fixture, Government must go by each post as it falls vacant and cannot circumvent this necessity by year-war reckoning of vacancies and keeping up the ratio. The counter-view put forward by Shri Parekh, for the appellants, is that quota and rota are not indissolubly wedded and are separate and separable. In the present case, according to him it is an error to import "rota" where the rule has spelt out only "quota" as a governing principle. The usual practice, sanctioned by rulings of this Court, is to go by the year as a unit for working out the quota.

30. Here again, we are not disposed to hold, having special regard to the recent decisions of this Court cited before us, that "quota" is so interlocked with "rota" that where the former is expressly prescribed, the latter is impliedly inscribed. Let us logicise a little. A quota necessarily postulates more than one source of recruitment. But does it demand the manner in which each source is to be provided for after recruitment, especially in the matter of seniority? Cannot quota stand independent of rota? You may fix a quota for each category but that fixes the entry. The quota methodology may itself take many forms--vacancy-wise ratio, cadre com position-wise proportion, period-wise or number-wise regulation. Myriad ways can be conceived of. Rotational or roster system is a commonly adopted and easily understood method of figuring out the placement of officers on entry. It is not the only mode in the code and cannot be read as an inevitable consequence. If that much is logical, then what has been done here is legal. Of course, Shri Garg's criticism is that mere "quota" is not viable without provision for seniority and, if nothing more is found in the rule, the quota itself must be understood to apply to each post as and when it falls to be filled. If exigencies of administration demand quick posting in the vacancy and one source (here, direct recruitment) has gone dry for a while, then the proper course is to wait for a direct recruit and give him notional date of entry as of the quota vacancy and manage to keep the wheels of government moving through improvised promotions, expressly stripping such ad hocist of rights flowing from temporary occupancy. We have earlier dealt with the same submission in a slightly different form and rejected it. Nothing more remains to be said about it.

The principles laid down by Apex Court in this judgment, being a complete answer, the contention raised is only to be rejected and we do so.

45. Another argument raised was that if R.2(b) was intended to provide a quota for direct recruitment, it would have been drafted, employing the word "and" instead of "or". It is true that the draftsmen have chosen to use the word "or" in between the former and the latter parts of R.2(b) of the Special Rules and it would have been ideal if the word "and" was used. However, that by itself is no

reason for us to adopt an interpretation that would defeat the object and intent of the Rule.

46. We were taken through various judgments dealing with cases where the word "or" has been read as "and" and vice versa and also explaining the circumstances in which such a course is permissible. The word "or" occurring in S. 5(2)(g) of the Rajasthan Nathwara Temple Act 1959 was held to mean "and" in the Apex Court judgment in *Tilkayat Shri Govindlalji Maharaj Vs. The State of Rajasthan and Others*, . Again, in the Judgment in *State of Bihar Vs. S.K. Roy*, the Apex Court read the word "or" as "and" to avoid an anomaly in S. 2(b) of the Coal Mines Provident Fund and Bonus Schemes Act 1948. Again in its judgment in *Ch. Razik Ram Vs. Ch. Jaswant Singh Chouhan and Others*, , the Apex Court held the word "or" occurring in S. 123(5) of the Representation of Peoples Act 1951 to mean "and" stating that such a construction appears to comport better with the aim and object of the amendment of 1966. In *Ishaque Vs. Raveendran Thampan*, , after referring to judgments rendered by the Apex Court and this Court, a Division Bench of this Court held that;

It is trite, going by the dictionary, legal dictionary, and the precedents the word "and" in an appropriate context can carry the meaning "and/or".

47. However, relying on the principles laid down in the Apex Court judgment in *Life Insurance Corporation of India Vs. D.J. Bahadur and Others*, , counsel for the petitioners cautioned us that such a course is permissible only when there are compelling reasons for adopting such a course. According to him, in the absence of any such compelling reasons, this Court should give the words of the rule its ordinary and literal meaning. In support of this proposition, reliance was placed on para 148 of the judgment, which reads thus;

148. In order to steer clear of the above interpretation of S. 11(2) learned counsel for the employees put forward the argument that the word "or" occurring in the section should not be read as a disjunctive and should be given the meaning "and" so that the two clauses forming the conditions about which the Central Government has to be satisfied before it can act under the section are taken to be one single whole; but we do not see any reason why the plain meaning of the word should be distorted to suit the convenience or the cause of the employees. It is no doubt true that the word "or" may be interpreted as "and" in certain extraordinary circumstances such as in a situation where its use as a disjunctive could obviously not have been intended (see *Mazagaon Dock Ltd. v. Commissioner of Income Tax and Excess Profits Tax*). Where no compelling reason for the adoption of such a course is, however, available, the word "or" must be given its ordinary meaning, that is, as a disjunctive. This rule was thus applied to the interpretation of clause (c) of S. 3(1) of the U.P. (Temporary) Control of Rent and Eviction Act, 1974 in *Babu Manmohan Das Shah v. Bishun Das* by Shelat, J.:

The clause is couched in single and unambiguous language and in its plain

meaning provides that it would be a good ground enabling a landlord to sue for eviction without the permission of the District Magistrate if the tenant has made or has permitted to be made without the landlord's consent in writing such construction which materially alters the accommodation or is likely substantially to diminish its value. The language of the clause makes it clear that the legislature wanted to lay down two alternatives which would furnish a ground to the landlord to sue without the District Magistrate's permission, that is, where the tenant has made such construction which would materially alter the accommodation or which would be likely to substantially diminish its value. The ordinary rule of construction is that a provision of a statute must be construed in accordance with the language used therein unless there are compelling reasons, such as where a literal construction would reduce the provision to absurdity or prevent the manifest intention of the legislature from being carried out. There is no reason why the word "or" should be construed otherwise than in its ordinary meaning.

48. From the principles that are laid down in the judgments referred to us, it is obvious that to give effect to the aim and object that is sought to be achieved by the Rule, it is permissible to read the word "or" as "and". We have already interpreted R.2(b) of the Special Rules and have concluded that it is intended to operate as a quota for direct recruitment. In order to give effect to that object of the rule and to avoid any ambiguity in its construction, it is necessary to read the word "or" as "and". Therefore we are unable to give much importance to the word "or" and to adopt an interpretation that will defeat the purpose and object of R.2(b) of the Special Rules.

49. On behalf of the petitioners, it was contended that R.2(b) of the Special Rules only provides an option to the appointing authority and that the one third prescribed is an upper limit. We have considered this contention also and are aware that the principles laid down by the Division Bench in its judgment in O.P.No. 1790 of 1985 supports this argument of the Counsel. The first part of this contention that the rule provided only an option and not a mandate is answered by our conclusion that the rule provided a quota in favour of the direct recruits. Therefore, that contention need not detain us any more.

50. We do not find any merit in the contention that what R.2(b) of the Special Rules provides is an upper limit in the event the appointing authority chooses the method of direct recruitment. A plain comparison of the language of the Delhi Special Rules and the Special Rules would show the difference in the terminologies employed. Reading of the O.P. Singla's judgment would show that the court accepted that the rule provided an upper limit because of its language and not for any other reason and this reasoning of the Apex Court cannot be imported into this case for the reason that the rules, by virtue of its difference in language, are totally different and incomparable. Therefore, this contention also does not impress us at all.

51. For the aforesaid reasons, we are unable to approve the principles laid down

in the judgment in O.P.No. 1790 of 1985 and connected cases and we hold that R.2(b) of the Special Rules provides a quota for direct recruitment from the Bar to the post of District and Sessions Judges in the Kerala State Higher Judicial Service.

52. Although, with the above conclusion on the issue of quota, the question referred to the Full Bench is answered, Counsel for the petitioners raised another contention that irrespective of our above conclusion, in view of R.6 of the Special Rules, the petitioners who have been appointed in service earlier than the direct recruits, are entitled to seniority in service from the date of their first appointment. Considering the terms of R.6, this argument would, at the first blush, sound attractive. But, to answer this plea, it needs a deeper probe in to the matter.

53. Rule 6 of the Special Rule, reads thus;

Seniority.- (1) The seniority of a person appointed either to category (1) or category (2) shall, unless he has been reduced to a tower rank as punishment, be determined with reference to the date of the order of his first appointment to the said category:

Provided that the seniority of a person appointed to category (2) prior to the 1st January, 1979 shall be determined with reference to the date from which he was appointed to the category otherwise than on a temporary basis, without being subsequently reverted from the post.

(2) If two or more persons are appointed by the very same order either to category (1) or to category (2) their inter seniority shall be determined by the serial order in which their names appear in the appointment order.

54. In so far as this question is concerned, what is relevant is R.6(1) of the Special Rules, and if one is to go by the language of the rule, it provides that unless a person appointed has been reduced to a lower rank as punishment, his seniority shall be determined with reference to "the date of order of his first appointment". Apart from the language of the Rule, counsel also pointed out the different yardsticks incorporated in the proviso to R.2(b) for the pre 1.1.1979 appointees, the absence of an explanation to R.6 which is similar to the Explanation to R.27(a) of the K.S. & S.S.R. and also that the Special Rule is the only one special rule with a separate provision for seniority.

55. It was also contended that since the rule did not specify the nature of appointment for the benefit of seniority, all appointees, irrespective of whether their appointment is temporary or adhoc, will also be eligible for seniority from the date of their first appointment unless he is reduced to a lower rank as punishment.

56. As against this, on behalf of the direct recruits, it was contended that Ext. P1, the Govt. Order relied as the order of appointment of the petitioners, is only an order by which the Governor conveyed his approval to the panel forwarded by

the High Court and that even in Ext P1, the approval of the panel was only for appointment as and when vacancies arise. They also argued that since Ext. P1 is not an order of appointment, the initial appointment of the petitioners was not in accordance with rules, but were only on ad hoc basis pending direct recruitment and against vacancies earmarked for direct recruitment and were made without prejudice to the rights of the direct recruits. Therefore, according to counsel, no right flowed from Ext P1, be it for regular appointment or for seniority as per R.6 of the Special Rules. However, on behalf of the High Court, it was only contended that seniority now assigned is proper.

57. First of all, the rule providing for quota for direct recruitment and the rule allowing seniority from the date of first appointment are parts of the very same special rule. Such a rule should be interpreted as one whole piece of subordinate legislation and one part of the rule should not be given an interpretation, which will render another part of it ineffective or otiose. Therefore, the court should adopt a harmonious interpretation of the various provisions of the rules, in its totality, which will promote and advance its object and purpose. It is keeping this principle in mind that we proceed to deal with the aforesaid contention.

58. We have already concluded that R.2(b) of the Special Rules provide separate quota for direct recruitment from the Bar and for appointment by transfer from the Subordinate Judiciary. R.6 provides for seniority from the date of first appointment, unless the appointee is reduced to a lower post by way of punishment. Where separate quotas are prescribed for appointment from different sources and when appointments are made to posts earmarked in a particular quota, naturally the appointee should be a candidate who is eligible to be appointed to the particular quota. Such an appointment, made in accordance with the special rule, alone can be an "appointment in accordance with the rule" to claim benefit of seniority.

59. Therefore, when a candidate is appointed to a post in a particular quota, he will not have any claim for seniority, unless his appointment is in accordance with the rules. Further, his claim for seniority from the date of his first appointment can only be against the other candidates appointed within the quota to which he is eligible and if the appointment is in a quota to which he is ineligible, he cannot set up a claim for seniority against candidates appointed to that quota in accordance with the rules.

60. As a corollary, if for any reason, a candidate has been appointed to a post falling within a quota to which he is ineligible, such an appointment will not be an appointment in accordance with rules and therefore, such appointment can neither create any right in favour of the candidate nor can it be prejudicial to the rightful claimants and the appointee will have to give way to the rightful claimants.

61. As far as the contention that Ext. P1 Government Order is only an order approving the panel for appointment and that the appointments that were made

were on adhoc basis are concerned, we are of the opinion that these arguments, urged at this distance of time in the career of the petitioners, are unworthy of any serious deliberation or consideration. In any event, the order approving the panel has been acted upon by the appointing authority and the High Court as an order approving the panel and also appointing the persons concerned in service. It was on that premise that orders were issued posting these officers to vacancies in the cadre of District and Sessions Judges and in those posting orders reference is made to Ext. P1 Govt. Order and it is stated that by virtue of the order, persons concerned "stand appointed" to the state higher judicial service. These developments have taken place during 2001/2002 and were not under challenge either at the instance of the direct recruits or anybody else. In such circumstances, we cannot now reopen those issues or unsettle the settled matters.

62. However, the question whether these appointments could prejudicially affect the direct recruits, is a separate issue, and has to be considered. We have already accepted the contention that R.2(b) of the Special Rules provides a quota for direct recruitment. Once separate quotas are prescribed for direct recruitment and for appointment by transfer from the subordinate judiciary, the ratio prescribed in the rules should be maintained against the cadre strength. In this context it is apposite to refer to the Apex Court judgment in Prasad Kurien and Others Vs. K.J. Augustin and Others, , in which, after making reference to R.5 of the K.S. & S.S.R., it was held that whenever a ratio or percentage is prescribed in the rules, it has to be computed on the cadre strength of the post to which recruitment is made and not on the basis of the vacancies existing at the time. Since the petitioners were appointed to posts earmarked for direct recruitment from the Bar, the fact that R.6 of the Special Rules recognises seniority from the date of first appointment, will not be of any assistance to them in their claim for seniority.

63. This view we have taken is consistent with the principles laid down by the Apex Court in various judgments. In The Direct Recruit Class-II Engineering Officers" Association and others Vs. State of Maharashtra and others, , it was held thus;

Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only adhoc and not according to rules and made as a stopgap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

64. This principle was reiterated in the judgment in State of W.B. and Others Vs. Aghore Nath Dey and Others, , where it was clarified that it is clear from the above conclusion that;

to enable seniority to be counted from the date of initial appointment and not

according to the date of confirmation, the incumbent of the post has to be initially appointed "according to rules.

Subsequently, in Union of India (UOI) Vs. Dharam Pal Etc., the Apex Court again held that;

It is, however, also well settled that where the initial appointment is only adhoc, not according to rules and made as a stopgap arrangement, the period of officiation in such post cannot be taken into account for considering seniority.

65. These principles were reiterated and followed by the Apex Court in its judgment in Ch. Narayana Rao Vs. Union of India (UOI) and Others, and State of Haryana and Others Vs. Vijay Singh and Others, .

66. A Division Bench of this Court also had occasion to deal with an identical situation in Aloysius, C.P. and Another Vs. Sarada Muraleedharan , where in paragraph 26, it was held thus;

Appointment in accordance with Rules is a condition precedent to count seniority. Temporary or ad hoc or fortuitous appointments etc., is not an appointment in accordance with the Rules and the temporary service cannot be counted towards the seniority. In the said case the Supreme Court further held that the temporary appointees were liable to be placed below the direct recruits. The Supreme Court Syed Khalid Rizvi and Others and Ramesh Prasad Singh and Others Vs. Union of India (UOI) and Others, held that the seniority of promotees is to be reckoned from the date of their inclusion in select-list or from the date of their continuous officiation in the cadre post whichever is later on approval of their appointment by Central Government. The period of their continuous officiation prior to such date would be treated as fortuitous and not countable. In Keshav Chandra Joshi and others etc. Vs. Union of India and others, the Supreme Court held that ad hoc or fortuitous appointments on a temporary or stopgap basis cannot be taken into account for the purpose of seniority, even if the appointee was subsequently qualified to hold the post on a basis. To give benefit of such service would be contrary to equality enshrined in Art. 14 read with Art. 16 (1) of the Constitution as unequals would be treated as equals. When promotion is outside the quota, the seniority would be reckoned from the date of the vacancy within the quota, rendering the previous service fortuitous. The previous promotion would be regular only from the date of the vacancy within the quota and seniority shall be counted from that date and not from the date of his earlier promotion or subsequent confirmation. In order to do justice to the promotees it would not be proper to do injustice to the direct recruits. The rule of quota being a statutory one must be strictly implemented and it is impermissible for the authorities concerned to deviate from the rule due to administrative exigencies or expediency. The result of pushing down the promotees appointed in excess of the quota may work out hardship but it is unavoidable and any construction otherwise would be illegal, nullifying the force of statutory rules and would offend Arts. 14 and 16(1).

67. In so far as these cases are concerned, pleadings show that realising that there was dearth of 8 candidates in the direct recruitment quota, even before the panel was forwarded for the approval of the Governor on 20.1.2001, the High Court had issued notification dated 28.10.2000, inviting applications from eligible members of the Bar for filling up these vacancies. Therefore, it was after the recruitment process had commenced, the panel was approved by the Governor by Government Order dated 16.2.2001, clarifying that the approval and appointment of the petitioners would be without prejudice to the claims of the candidates to be recruited from the Bar. When the High Court issued posting orders, there also, it was made known that it was without prejudice to the claims of the direct recruits. It is on that basis the petitioners joined service.

68. Since appointment is to be made from the two different sources and when the rule prescribes quotas for each of these sources and also the ratio to be maintained, seniority of appointees to each of these quotas, can be only from the respective dates of their appointment within the quota. It is to facilitate fixation of seniority on that basis and to avoid future disputes that the appointing authority and the High Court made the approval of the panel without prejudice to the claims of the direct recruits. Since the purport of the Special Rules is as understood by us, we do not find anything illegal in the provision in the orders issued by of the Government of Kerala or the High Court, that the approval, appointment and the posting of the petitioners shall be without prejudice to the claims of the candidates to be recruited from the Bar.

69. Coming to the issue of reversion of the three persons, who according to High Court were rendered excess when the direct recruits joined service is concerned, in view of our aforesaid conclusions, we are of the view that it was an inevitable consequence. Otherwise, it would not have been possible to maintain the quota prescribed in the Special Rules. Therefore, reversion is absolutely unassailable.

70. Now what remains is the correctness of the seniority assigned to the petitioners. Once we have upheld the action of the Government and the High Court making the approval, appointment and posting without prejudice to the rights of the direct recruits, we should also uphold the seniority assigned to the petitioners on that basis. Therefore, these contentions raised by the petitioners deserve only to be rejected. The upshot of our above discussion is that:

- 1) The Division Bench judgment in O.P.No. 1790 of 1985 and connected cases is overruled.
- 2) These Original Petitions are dismissed.
- 3) Parties will bear their respective costs.