

(2006) 06 UK CK 0021

In the Uttarakhand High Court

Case No : Writ Petition No"s. 542 (S/B) of 2002, 1527 (S/S) of 2003 and 287 (S/S) of 2004

Jagpal Singh and Others

APPELLANT

Vs

State of Uttaranchal and Another

RESPONDENT

Date of Decision : 29-06-2006

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Uttar Pradesh PWD (IB) Subordinate Engineer Services Rules, 1951 — Rule 12, 14, 15, 16, 17

Uttar Pradesh Regularisation of Ad hoc Appointments (On Posts Within the Purview of the Public Service Commission) Rules, 1979 — Rule 7

Citation : (2007) 1 UC 327

Hon'ble Judges : M.M. Ghildiyal, J

Bench : Single Bench

Advocate : S.N. Babulkar, V.B.S. Negi, K.N. Joshi and Arvind Vashista, for the Appellant; L.P. Naithani assisted by, Sharad Sharma, N.S. Negi and Paresh Tripathi for State of Uttaranchal, for the Respondent

Final Decision : Dismissed

Judgement

M.M. Ghildiyal, J.—Heard Sri S.N. Babulkar, Sr. Advocate, Sri V.B.S. Negi, Sri K.N. Joshi and Sri Arvind Vashista learned Counsel for the Petitioners, Sri LP. Naithani, Sr. Advocate, ,assisted by, Sri Sharad Sharma, Sri, N.S. Negi learned Counsel for the interveners and Sri Paresh Tripathi, learned standing counsel for State of Uttaranchal.

2. In the aforesaid three writ petitions, the Petitioners, who are Junior Engineers in the Irrigation Department, have disputed the seniority list dated 09-08-2001. Consequently, the writ petitions are being decided by a common judgment.

3. In writ petition No. 542 (SB) of 2002 there are eight Petitioners.

4. The Petitioners have claimed that they were initially appointed as Junior Engineer in the Irrigation Department on adhoc basis during 1977-78 and their

services were regularized in between 1983-89. Petitioners were appointed against vacant posts and continued on the post till their regularization. The grievance of Petitioners is that the Respondents are not counting their services from the date of their initial appointment for the purpose of their seniority and have fixed their seniority treating them to have been appointed from the date of their regularization. At the admission stage, it was submitted by the Petitioners that Departmental Promotion Committee is going to be held for making promotion to the post of Assistant Engineer and in case, the services of the Petitioners from the date of their initial appointment is not counted by the department for the purpose of seniority they will be deprived of being promoted to the post of Assistant Engineer. This Court on 18-05-2004 passed order to the following effect:

Heard Sri V.B.S. Negi, learned Counsel for the Petitioners and learned standing counsel for the Respondents.

Petitioners have claimed that initially the Petitioners were appointed in the year 1977-78 in the Irrigation Department on adhoc basis and they were regularized in between 1983-89. However, Respondents are not taking services of the Petitioners for the purpose of seniority from the date of their initial appointment and the department has fixed their seniority from the date of their regularization.

The contention of the Petitioners is that they were appointed against the substantive vacancy and continued till their regularization, as such, their services should have been considered for seniority from the date of their initial appointment. It has been further submitted that DPC is going to be held from 20-05-2004 for promotion to the post of Assistant Engineer in the Department.

Considering the facts narrated above, it is provided that any promotion made in pursuance to the DPC alleged to be held from 20-05-2004 shall be subject to the decision of the writ petition.

Learned standing counsel shall file counter affidavit, if not filed so far, within two weeks. Thereafter, two weeks time is granted for filing rejoinder affidavit. List this petition in the third week of June, 2004. In the meantime, Respondents may consider the candidature of the Petitioners for promotion. However, the result of the Petitioners shall not be declared till further order of this Court.

5. Intervention/Impleadment application along with counter affidavit and stay vacation application No. 2335 of 2004 has been filed by Sri Bhuvan Chandra Pant, Jr. Engineer, Irrigation Department, who was selected by Public Service Commission and was placed in the seniority list above the Petitioners. In the application the intervener has stated that in view of the order passed by this Court on 18-05-2004 the Respondents have postponed the DPC to be held from 20-05-2004. This Court on 27-05-2004 has clarified the order dated 20-05-2004 as under:

In view of the aforesaid facts, the order dated 18-05-2004 is clarified to the

extent that the court has not postponed the selection through DPC. Petitioners may also be considered for promotion. However, the result of the Petitioners shall not be declared till further order of this Court.

6. In the aforesaid writ petition two sets of Petitioners are there. Petitioners No. 3, 4, 7 and 8 are those who were appointed in the year 1977 on adhoc basis and later on selected by Public Service Commission on 30-03-1982 whereas the Petitioners No. 1, 2, 5 and 6 were appointed temporarily on adhoc basis by the department and have not ever faced Public Service Commission.

7. Sri V.B.S. Negi, learned Counsel for the Petitioners has submitted that he does not want to press writ petition on behalf of Petitioner Nos. 3, 4, 7 and 8 namely Sri Deepak Kumar Thapa, Laxmi Prasad Gairola, Harish Chandra Joshi and Ishwar Dutt as they were selected by the Public Service Commission and their seniority has been fixed as per list of selectees issued by Public Service Commission. This Court on 29-03-2005 allowed the prayer made by Sri V.B.S. Negi and permitted him to delete the name of Petitioners No. 3, 4, 7 and 8 from the array of parties.

8. There are five Petitioners in writ petition No. 1527 of 2003. Petitioners in this writ petition have also challenged the seniority list dated 09-08-2001 and have taken same stand as have been taken by the Petitioners of writ petition No. 542 of 2002.

9. In writ petition No. 287 of 2004 Prakash Chandra v. State of Uttaranchal there are six Petitioners. They have prayed to issue a writ in the nature of Mandamus commanding the Respondents to re-fix the seniority of the Petitioners from the date of their initial appointment with all consequential benefits. The stand taken by the Petitioner is same as of other Petitioners in connected petitions.

10. State Government has filed counter affidavit stating therein that the State of U.P. published final seniority list of Junior Engineers working in Irrigation Department in the year 1984. Inter se seniority between the Junior Engineers who were selected by Public Service Commission and who were appointed temporarily and later on regularized under the rules of 1979 was finally settled by the aforesaid list. After Hill Sub Cadre Rules were framed in the year 1992 a list of Junior Engineers who opted for Hill Sub Cadre was prepared. The placement of employees in Hill Sub Cadre list was in accordance of seniority list published in 1984 and the seniority list of Junior Engineers of Hill Sub Cadre was published in 1997. The impugned seniority list published on 09-08-2001 is based on seniority list of 1984. By challenging the list of 2001, in fact, the Petitioners are challenging the seniority list published in 1984.

11. Impleadment application No. 2392 of 2003 along with Counter affidavit has been filed by one intervener Sri Manwair Singh Rawat. Sri Bhuwan Chandra Pant and Sri Rewadhar Pant have filed stay vacation application No. 2335 of 2004 along with counter affidavit in writ petition No. 542 of 2002. Sri Harish Chandra Joshi and three other Junior Engineers have filed intervention/impleadment application No. 2965 of 2003. Similarly, Sri Lalit Mohan Joshi and Sri Kundan

Singh Bangari have also filed intervention application No. 7149 of 2003 along with counter affidavit and supplementary counter affidavit. The interveners have stated that in the year 1978, 2368 posts of Junior Engineer in the Irrigation Department were advertised by the U.P. Public Service Commission and the interveners in impleadment application No. 2392 of 2003 as well as Petitioners No. 3, 4, 7 and 8 in Writ Petition No. 542 (SB) of 2002 were selected by the U.P. Public Service Commission on 30-03-1982. After selection through Public Service Commission seniority was fixed by the Department on 04-08-1984. Petitioner Nos. 1, 2, 5 and 6 were appointed on adhoc basis and were regularized in pursuance to Regularization Rules of 1979 as amended in the year 1984. Since Petitioner Nos. 1, 2, 5 and 6 joined their duties after January, 1977 they did not fulfil the requirement for regularization under 1979 Rules. These Rules were again amended in the year 1984 and under Amended Rules services of the Petitioner Nos. 1, 2, 5 and 6 were regularized. Rule 7 of the aforesaid Rules specifically states that person appointed under these Rules shall be entitled to seniority only from the date of appointment after selection in accordance with these Rules. Though the Petitioners were appointed on adhoc basis, but no approval was taken from the Public Service Commission at the time of adhoc appointment and their services were regularized during 1984-85 under Regularization Rules of 1979 as amended later on whereas the Petitioner Nos. 3, 4, 7 and 8 were selected and approved by Public Service Commission in the year 1982 and the seniority was fixed in accordance with select list issued by Public Service Commission. The seniority list was published in the year 1984. In respect of interveners and Petitioner Nos. 1, 2, 5 and 6 seniority list was finalized on 28-05-1986. More than 17 years have passed after finalization of seniority and after such a long gap Petitioner cannot be permitted to re-open the seniority dispute. In the year 1997 a separate list of all the Junior Engineer in the Department who opted for Hill Sub Cadre under 1992 Rules was published on the basis of seniority list of 1984-1986. Sri Lalit Mohan Joshi and Sri Kundan Singh Bhangari, interveners have also reiterated the same facts, as mentioned by Sri Manwar Singh Rawat. Sri Bhuwan Chandra Pant has also stated that the post of Junior Engineer was under the purview of U.P. Public Service Commission and could only be filled through selection by Public Service Commission. Government of U.P. appointed number of Junior Engineers on adhoc basis from time to time prior to enforcement of Regularization Rules of 1979. Those appointments were not made by any Selection Committee much less by the Public Service Commission.

12. Sri Bhuwan Chandra Pant, who was also working as adhoc employee on the post of Junior Engineer along with Petitioner Nos. 3, 4, 7 and 8 faced Public Service Commission and was recommended for permanent appointment by the Public Service Commission. So far as Petitioners No. 3, 4, 7 and 8 are concerned in the selection list published by the Public Service Commission, they were placed at serial No. 3763, 3950, 4176 and 4188 respectively and Sri Manwar Singh Rawat, Sri Pushkar Singh Bisht, Sri K.N. Punetha, Sri Bhuwan Chandra Pant and

Sri Harish Chandra Joshi were placed at serial No. 3423, 3441, 3517, 3603 and 3390 respectively. So far as Petitioner Nos. 1, 2, 5 and 6 are concerned though they were appointed on adhoc basis since 04-10-1977, 03-11-1977, 29-03-1978 they neither faced U.P. Public Service Commission nor were recommended by the Public Service Commission and were regularized under Regularization Rules of 1979 as amended from time to time. In the seniority list prepared by the State of U.P. on 28-05-1986 the Petitioners were placed below the interveners. In the year 2000 promotions were made to the post of Assistant Engineer on the basis of seniority list published in 1984. Petitioners did not challenge the same and now after more than 17 years they are challenging the seniority list of 2001, which is based on the seniority list of 1984.

13. Supplementary counter affidavit has also been filed by Sri Lalit Mohan Joshi and Sri Kundan Singh Bangari (interveners). In para 4 of the counter affidavit it is submitted by the answering Respondents that they were initially appointed on adhoc basis, however, later on they were selected in the year 1982 by the Public Service Commission in pursuance to the advertisement of 1978 for selection to the post of Junior Engineer. Most of the appointees of 1982 have been promoted in the year 2000 as Assistant Engineer. A number of persons have retired since they are not party to the writ petition, as such, the writ petition is not maintainable. Petitioners have filed a list of Junior Engineers who were promoted to the post of Assistant Engineer on 25-05-2000. An amendment application has been filed by the Petitioner stating therein that the Respondent has issued a list on 31-03-2003 of Junior Engineers (Civil) who are likely to be considered for promotion to the post of Assistant Engineer. He has further submitted that the DPC is going to be held for promotion to the post of Assistant Engineer and thus, has sought quashing of list dated 31-03-2003.

14. In the rejoinder affidavit, the Petitioner has submitted that the Respondents opted for Hill Sub Cadre under Rules of 1992 and on 06-08-1997 the list of Hill Sub Cadre was published. Petitioners filed objections against the Seniority List stating therein that their seniority should be fixed from the date of initial appointment and not from the date of regularization.

15. On the pleadings of the parties following issues arise for consideration:

- i. Whether the writ is maintainable in view of the fact that Petitioners have alternative remedy by way of filing claim petition before Public Service Tribunal?
- ii. Whether Rule 7 of U.P. Regularisation of Adhoc Appointment (on posts within the purview of Public Service Commission) Rules, 1979 as amended time to time is applicable to the Petitioners for the purposes of seniority?
- iii. Whether the Petitioners can be permitted to agitate the seniority list after a long gap of about 18 years in view of the fact that the present seniority list which is impugned is based on the seniority list of 1984 and further in the circumstances when number of persons have already been promoted to higher posts and number of persons have already been retired from service.

iv. Whether the writ petition is maintainable in spite of the fact that Petitioners have not impleaded the affected persons though they have claimed seniority over them?

16. Alternative Remedy: learned Counsel for both the parties have placed reliance on the judgment passed by the Division Bench in case of Umesh Sharma v. State Election Commissioner and Ors. reported in 2004 (1) UD 255; Yogita Kapoor v. Union of India reported in 2004 (2) UD 275; Hukum Chandra v. Vivek Singh and Anr. reported in 2004 (1) UD 477 and Arvind Kumar Singh v. Superintendent of Police reported in 2003 (UD) 188.

17. The Hon'ble Apex Court in the case of Hukum Chandra v. Vivek Singh (Supra) has held that availability of alternative efficacious remedy does not implicitly and necessarily take away the jurisdiction of the High Court to hear the writ petition and exclusion of exercise of writ jurisdiction on account of availability of alternative remedy is rule of discretion. Since the present writ petition was entertained at the admission stage and pleadings have been exchanged between the parties it will not be proper at this stage to throw the writ petition on the ground that Petitioners have alternative remedy. The issue is decided accordingly.

18. Whether Petitioners are entitled to get seniority from the date of adhoc appointment? learned Counsel for the Petitioners have submitted that since the Petitioners were appointed against the substantive vacancies though on adhoc basis by the department are entitled to get the benefit of service rendered by them for the purposes of seniority. Rule 7 of the U.P. Regularisation of adhoc appointment (on the post within the purview of Public Service Commission) Rule 1979 notified by notification dated 19/VIII-75 (1-KA-1) dated 14-05-1979 is not applicable to them. Rule 7 of the aforesaid Rules is reproduced as under:

7(1) A person appointed under these Rules shall be entitled to seniority only from the date of order of appointment after selection in accordance with these Rules and shall in all cases, be placed below the persons appointed in accordance with relevant services rules or as the case may be, regular prescribed procedure, prior to the appointment of such person under these Rules. Rule (2) if two or more persons are appointed together their seniority interse shall be determined in the order mentioned in the order of appointment.

19. Neither the Petitioners in all the three petitions nor Respondents/interveners could show appointment letters of the Petitioners or interveners, as such, it is highly disputed that what were the conditions of appointment and whether the appointment of Petitioners were made in accordance with law?

20. Prior to 1992 the services of the Junior Engineers (Irrigation Branch) were governed by the U.P. PWD (IB) Subordinate Engineer Services Rules, 1951. Part III Rule 5 of the aforesaid rule prescribes for source of recruitment which states that recruitment to the services shall be made directly in consultation with the Commission in accordance with the procedure laid down in part V of these Rules.

Part V of the Rules prescribes procedure for recruitment. Rule 12 of the aforesaid Rules says that the Chief Engineer shall intimate the Commission in the month of August, every year about the number of vacancies, which are required to be filled. Rule 14 prescribes scrutiny of applications, interview and selection by the Commission. Under Rule 16 Commission shall prepare a list of candidates selected for recruitment in order of merit and forward the same to the Chief Engineer. If the number of candidates in the list being larger than the number required, under Rule 17, the Chief Engineer on the occurrence of substantive vacancies shall make appointment to the Service from the list prepared under Rule 16. Rule 17 Sub Clause 2 provides that the Chief Engineer shall make appointment against temporary posts or officiating vacancies also from among the approved candidates on the waiting list; provided that if no approved candidate is available for such appointment, the Chief Engineer may appoint a person who is eligible under these rules for permanent recruitment to the service. But such appointment shall not be made for the period exceeding 12 months without consultation with the commission. In every case where the appointment is made under this proviso intimation should be furnished to the Accountant General specifying clearly that the appointment has been made under this proviso. Rule 18 speaks about the seniority. As per Rule 18, seniority in the service shall be determined by the date of order of appointment in substantive vacancies; provided that if two or more candidates are appointed on the same date, their seniority shall be determined according to the order in which their appointment has been made under Rule 17. Thus, it is clear that the appointment against the substantive vacancies can only be made under Rule 12, 14 and 16 by the Public Service Commission. Officiating appointment or temporary appointment may be made by the Chief Engineer from the waiting list under Rule 16 and if the candidates are not available the person who is eligible under the Rules for permanent recruitment may be appointed by the Chief Engineer for a period not exceeding 12 months and if the appointment is continued after 12 months consultation of the commission is mandatory. Further, any appointment so made under Rule 17(2) the intimation of such appointment is required to be furnished to the Accountant General.

21. In the year 1992, Uttar Pradesh Irrigation Department Civil Engineers Subordinate Service Rules, 1992 came into force. Under Rule 5 of the aforesaid Rules, recruitment to the post in service shall be made 90% by direct recruitment through Commission and 10% by way of promotion through Selection Committee from amongst substantively appointed Tracers and Group C employees of the Irrigation Department of UP. who have completed 10 years of services as such and who possess the qualifications prescribed under Rule 8 on the first day of the year of recruitment. Part V of the aforesaid Rules prescribes procedure for recruitment. Under Rule 14, the Appointing Authority shall determine and intimate to the Commission the number of vacancies to be filled during the course of the year as also the number of vacancies to be reserved for candidates belonging to schedule castes, schedule tribes and other categories

under Rule 6. Rule 15 provides procedure for direct recruitment through Commission, which says that the application for promotion to appear in the competitive examination shall be called by the Commission in the prescribed form published in the advertisement by the Commission. Under Rule 15 Sub Clause 4 Commission shall prepare a list of candidates with all their proficiency as disclosed by aggregate of marks obtained by each candidate in the written examination and interview and recommend such number of candidates as they consider fit for appointment. Under Rule 18 the Appointing Authority shall make the appointment by taking the names of candidates in the order in which they stand in the list prepared under Rule 15, 16 or 17 as the case may be. Rule 21 of the aforesaid Rules speaks about seniority that the seniority of a person substantively appointed shall be determined in accordance with Uttar Pradesh Government Servant Seniority Rules, 1991 as amended from time to time.

22. Number of authorities have been cited from both the parties. Sri S.N. Babulkar has placed reliance on the judgement of Hon''ble Apex Court in the case of S.B. Patwardhan and Another Vs. State of Maharashtra and Others, wherein the Hon''ble Apex Court struck down Rule 8(ii) of Bombay Service of Engineers (Class I and Class II) Recruitment Rules, 1960 holding the rule in violation to Article 14 and 16. The court has held that the contention that though direct recruits appointed on probation as Dy. Engineer enter Class 11 cadre from the very day of their appointment the persons promoted as officiating Dy. Engineers do not belong to Class II Cadre until they are confirmed as Dy. Engineer cannot be accepted. In the aforesaid case, the dispute was between direct recruits and promotees whereas in the present case interse seniority of direct recruits is in dispute. The authority cited is not applicable in the present case.

23. learned Counsel for both the parties have placed reliance on the judgement of Apex Court in the case of Dr. Chandra Prakash and Ors. v. State of U.P. and Anr. reported in 2002 (10) SCC 710 wherein the Apex Court in the operative portion has held as under:

We accordingly allow the writ petitions and declare that (i) writ Petitioners are not within a purview of 1979 Rules; (ii) the State Government will fix the seniority of all the doctors in the case of PMHS Cadre from the date of orders of their initial appointment within a period of six weeks from the date of its order and give all consequential benefits including promotions and positions on the basis of such seniority list; and (iii) those persons who were selected in 1972 and 1977, 1978, 1979 by Public Service Commission and who were not issued any orders of appointment and joined the services on the basis of Tandon case will be treated as having been appointed on the date they actually joined the service and their seniority will be counted from that date.

24. learned Counsel for the interveners have submitted that the facts of Dr. Chandra Prakash's case before Hon''ble Apex Court were different from the present one. The Apex Court in para 20 of aforesaid judgement has held that there were five categories of persons; (i) those persons who are in service as

temporary recruits and who have not been selected by the Public Service Commission but are given seniority from the date of joining service on the basis of Court orders passed by the High Court or by bench of three Hon"ble Judges of the Apex Court, (ii) Second category before the Hon"ble Supreme Court was of those persons, who were in service as temporary recruits and who have been later on selected by the Public Service Commission in 1972. (iii) Third category before the Hon"ble Supreme Court was of those persons, who were in service as temporary recruits and who have been later on selected by the Public Service Commission during the year 1977, 1978 and 1979. So far as category Nos. 2 and 3 are concerned, they include persons who were selected by the Public Service Commission in 1972, 1977, 1978 and 1979. However, they were not given appointment by the Government in pursuance to the aforesaid selection made by Public Service Commission and in fact, the selectees before the Hon"ble Supreme Court were aggrieved by the order of the State Government dated 13-03-1984 communicating to the U.P. Public Service Commission that the select list prepared by the U.P. Public Service Commission for the year 1977, 1978 and 1979 was cancelled and would not be given effect to. (iv) The fourth category before the Hon"ble Supreme Court was in respect of those doctors who were in service as temporary recruits and have not got any benefit of order passed by High Court or Supreme Court and (v) the fifth category was in respect of those recruits who were selected by the Public Service Commission in the year 1977, 1978 and 1979 who have been subsequently, appointed.

25. While considering the seniority, the Apex Court considered Rule 17(2) of 1945 Rules, which were applicable to the Medical Services, which provides that the Governor may make appointment in temporary or officiating vacancies from amongst persons, who are eligible for permanent appointment to the service under these Rules and held that it could not, therefore, be said as was held in the Tandon's case that the Petitioners in Dr. Chandra Prakash case were appointed dehors the service rule.

26. In para 35 of the judgement, the Hon"ble Apex Court has held as under:

The Petitioners in Mathur case were qualified to be appointed in what was then known as PMS. The High Court upheld the claim that they were eligible to be appointed to the Rules framed in 1981 amending the 1945 Rules with effect from 04-10-1961. They had been temporarily appointed against the substantive vacancies and their appointment in continuous service was in consultation with PSC. Even though their appointments were stated to be temporary in their appointment letters, they were not treated as ad hoc appointees at all till the State sought to appoint them in 1982 under the 1979 Rules and fix their seniority with effect from 3-8-1982 ignoring the 20 years of service put in by them from the date of their initial appointments.

27. learned Counsel for the interveners has submitted that in the Service Rules applicable to the Junior Engineer (Irrigation Department) the appointment is to be made through Public Service Commission and in case, any appointment on

officiating basis or temporary basis is made by the Head of the Department the said appointment shall not exist after 12 months without approval of the Public Service Commission as also without furnishing information to the Accountant General.

28. From perusal of the record it is clear that at no stage the appointment of the Petitioners were approved by the Public Service Commission nor the approval was ever sought by the department for making adhoc appointment nor any information, as per rule, was furnished to the Accountant General and as such, the appointment of the Petitioner was de hors the rules. learned Counsel for the Petitioners could not show any document to the effect that the appointments of the Petitioners were made in consultation with the Public Service Commission nor they could show any document that the information was furnished to Accountant General, as per requirement of 1951 Rules.

29. In the case of Dr. Chandra Prakash the benefit has been given by the Apex Court to the Petitioners of Mathur's case, to count their service from the date of their initial appointment on the basis of finding given by the High Court. "In Mathur's case the Petitioners had been appointed and selected temporarily pursuant to the notification for filling up the post and in consultation of U.P. Public Service Commission. All the Petitioners had MBBS degree with requisite experience and were entitled to be appointed against the vacancies then existing. Although Petitioners were appointed temporarily, their appointments were against the substantive vacancies. The court also noted that the select list, which had been published in the year 1967, which showed that the temporary PMS Officers like Petitioners in Mathur's. case had been approved by the U.P. Public Service Commission. In these circumstances High Court held that the Petitioners could not be treated as having been appointed on adhoc basis and that 1979 Rules did not apply to them, consequently, their seniority was not to be fixed from the date of their regularization under 1979 Rules but from the date of their initial appointment in the PMS Cadre. On the basis of these findings of the High Court, which were affirmed by the three Judges Bench of the Apex Court in the case of Dr. Chandra Prakash v. State of U.P. the apex court has granted same relief to the Petitioners, who were similarly situated with the Petitioners in Mathur's case and directed the Government to count their seniority from the date of their initial appointment.

30. In view of the discussions made above, Petitioners cannot take benefit of the Apex Court's decision in the case of Dr. Chandra Prakash.

31. learned Counsel for the Respondents have placed reliance on the judgment of Constitutional Bench of Hon'ble Apex Court in the case of The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others, . In para 47 of the aforesaid judgment the Hon'ble Apex Court has held as under:

To sum up, we hold that (A) 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 ad hoc and not according to the rules and made as stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

32. From the facts, which have been narrated by the Petitioners as well as interveners it is clear that the Petitioners' appointment were not in accordance with the relevant rules. On the contrary temporary appointment cannot be made by Chief Engineer for the period exceeding 12 months without consultation with the Commission and in every case where the appointment is made under the proviso intimation should be furnished to the Accountant General specifying clearly that the appointment has been made under the proviso. When the temporary appointment cannot be made under the Rule for more than 12 months, Petitioners' appointment at the most can be held to be ad hoc appointment or stop gap appointment. Petitioners could not show even their appointment letters. It is admitted fact that neither the Public Service Commission was consulted nor, as required under the Rules the intimation was furnished to the Accountant General as provided under the Rules.

33. The Hon'ble Apex Court in the case of Santosh Kumar and Others Vs. G.R. Chawla and Others, has held that the ad hoc appointment made being in nature of stop gap appointment even though they are made after satisfying all the tests for regular appointment, for the purpose of seniority inclusion of ad hoc service is not permissible.

34. The case of the Petitioner is worst than the Petitioners of the above aforesaid case. In the present case the ad hoc appointment too was not made after satisfying all tests for regular appointment.

35. The Apex Court in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, has observed that regularization or permanent continuance of temporary, contractual, casual, daily wage or ad hoc employees appointed/recruited and continued for long in public employment de hors the Constitutional Scheme of public employment.

36. Though in the aforesaid case, the question of regularization of aforesaid category of the employee was involved the principle laid down by the Hon'ble Apex Court is that the continuance of the appointment which are de hors the rules should not be encouraged. Though the Petitioners in the present case have already been regularized by the State Government under U.P. Regularization of Ad hoc Appointment (on the post within purview of Public Service Commission) Rules 1979 as amended from time to time. The question involved in the present case is whether the Petitioners should be given seniority from the date of their initial appointment on ad hoc basis or from the date of their regularization under the aforesaid rule as provided under Rule 7 of the Rules.

37. Rules 7(1) specifically states, person appointed under the Rules shall be entitled to seniority only from the date of order of appointment after selection in accordance with these rules.

38. Petitioners have been placed in the seniority list as provided under aforesaid Rules.

39. I do not find any force in the submission made by learned Counsel for the Petitioners that they should be given seniority from the date of their initial appointment.

40. Whether seniority list can be challenged after a long gap/without impleading necessary parties? Petitioners have challenged the seniority list dated 09-08-2001. It is not disputed that this seniority list is based on the seniority list prepared in the year 1997 for hill sub cadre. 1997 seniority list of Junior Engineers in the department, who opted for hill sub cadre under 1992 Rules was published on the basis of seniority list of 1984 of the Junior Engineers of the State of U.P. Thus, the seniority list of 2001 is in fact is the list prepared in the year 1984. It is admitted by the parties that the Petitioners have not challenged the 1984 seniority list. Again on the basis of this list of 1984 another seniority list of Junior Engineers, who opted for hill sub cadre in the year 1992 was published in the year 1997. The Petitioners have not been able to show any document, which could show that they had challenged the seniority list of 1997 or filed any objection.

41. Petitioners even did not challenge the seniority list when the promotions were made to the post of Assistant Engineers on the basis of impugned seniority list. Last promotions were made on 25-05-2000 promoting as many as 26 Junior Engineers to the post of Assistant Engineers. It is also not disputed that number of persons have already been retired.

42. The Hon''ble Apex Court in B.S. Bajwa v. State of Punjab reported in 1998 (78) FLR 560 has held as under:

The undisputed facts appearing from the records are alone sufficient to dismiss the writ petition on the ground of laches because the grievance made by the B.S. Bajwa and B.D. Gupta only in 1984 which was long after they had entered the department in 1971-72. During this entire period of more than a decade they were all along treated as junior to the other aforesaid persons and the rights of interse had crystallized which ought not to have been re-opened after the lapse of such long period. At every stage others were promoted before B.S. Bajwa and B.D. Gupta and this position was known to B.S. Bajwa and B.D. Gupta right from the beginning as found by the Division Bench itself. It is well settled in service matters the questions of seniority should not be re-opened in such situations after lapse of reasonable period because that results in disturbing the settled position which is not justifiable.

43. In the present case too, the Petitioners were being treated as junior to other

persons who were placed above the Petitioners since 1984 and the Petitioners were aware of the fact even then they have not challenged the seniority list of 1984. Number of persons were promoted and they have not challenged the promotions of those persons. Even in the year 1997 another list was published which was based on the seniority list of 1984. Now after lapse of about 18 years Petitioners are challenging the seniority list, which will certainly result in disturbing the settled position, which is not justified. There is inordinate delay in the present case for making such a grievance.

44. Petitioners claim is that though they were appointed on adhoc basis some times in the year 1977-1978 and were continuously working till their services have been regularized under U.P. Regularization of Adhoc Appointment (On post within the purview of Public Service Commission) Rules, 1979 as amended from time to time but the services rendered by them are not being counted for the purpose of seniority from the date of the initial appointment in view of the Rule 7 of the aforesaid rules which provides that the seniority shall be counted from the date of their regularization under these rules with the result the persons who have been selected through Public Service Commission in the year 1981-82 have been placed above the Petitioners. The Petitioners have not impleaded those persons who were selected by the Public Service Commission and are placed above the Petitioners in the seniority list. Any order passed in favour of the Petitioner would certainly affect the right of those who have been placed above the Petitioners in the seniority list of 1984 on the basis of which seniority list of 1997 and thereafter, seniority list of 2001 was prepared. Number of persons have already been promoted on the basis of aforesaid seniority list and further, number of persons have already been retired from the service. Since the affected persons are not party in the writ petition no adverse order can be passed by the court, which would effect the right of those persons who are not before this Court. Otherwise also as discussed above the relief sought by the Petitioners cannot be granted to them.

45. For the reasons recorded above all the writ petitions are dismissed. Applications no 2392/2003, 2335/2004, 7149/2003 and 2965/2003 are disposed of. No order as to costs.