
(2015) 06 GAU CK 0087
In the Gauhati High Court
Case No : WA Nos. 5 (K) and 6 (K) of 2012

K. Theunuo

APPELLANT

Vs

Temsutemjen (Er.) and Others

RESPONDENT

Date of Decision : 19-06-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2015) 4 GLT 1

Hon'ble Judges : Ujjal Bhuyan and Suman Shyam, JJ.

Bench : Division Bench

Advocate : S. Dutta, Sr. Advocate and Apok Pongener, for the Appellant; K. Sema, Addl. AG, A. Zhimomi and Imti Longjem, for the Respondent

Final Decision : Dismissed

Judgement

Suman Shyam, J.—Being aggrieved by the common judgment and order dated 09.05.2012 passed by the learned Single Judge disposing of Civil Rule No. 120(K)/1993 as well as WP(C) No. 60 (K)/2010, Writ Appeal Nos. 6(K)/2012 and 5(K)/2012 has been preferred by the appellant Sri K. Theunuo. The facts giving rise to the aforementioned two writ petitions may be briefly noticed as follows:--

"By the notification dated 23.07.1981 issued by the Deputy Secretary to the Government of Nagaland a temporary post of Draftsman Grade-I was created for the Engineering Cell under the Commissioner, Nagaland carrying scale of pay of Rs. 400-25-500-EB-25-750-EB-30-900/- per month The writ appellant was temporarily appointed in the post of Draftsman Grade-I in the Civil Administrative Works Division (CAWD) in the office of the Commissioner, Nagaland by order dated 20.06.1986. In the said order dated 20.06.1986, it was inter-alia mentioned that the appointment of the appellant was purely temporary and may be terminated at any time without assigning any reason thereof. Thereafter, by a notification bearing No. GAB-2/58/86 (Vol-I) dated 06.03.1987 issued by the Home Commissioner to the Government of Nagaland, the appellant was given officiating promotion to the post of Assistant Engineer (Class-II

Gazetted) in the Civil Administrative Works Division, in the Commissioner's office subject to regularization by the Departmental Promotion Committee."

2. The respondent Nos. 6 to 26 in Writ Appeal No. 6(K)/2012 were all appointed as Assistant Engineer/Sub-Divisional Officers under the Department of Works and Housing on the basis of a selection process conducted by the Nagaland Public Service Commission (NPSC) on different dates between 15.12.1984 and 08.03.1989.

3. On 16.12.1988 the Chief Secretary to the Government of Nagaland had issued a notification bearing No. AR-13/6/88 amalgamating all the Engineering Wings attached to the various Government Departments of Nagaland, save and except the Departments of Nagaland State Transport, Geology & Mining and Agriculture into one Department, viz. Works and Housing Department with effect from 01.04.1989. In the said notification dated 16.12.1988 it was also mentioned that as per order of the Governor of Nagaland, all the posts of the Engineering Wings in the various Departments shall form a combined cadre with respective cadre posts in the Engineering Service of the Works and Housing Department, with effect from the date of amalgamation. Further, the incumbents holding the posts which have now been encadred shall be decreed to have been duly appointed to various posts in different cadres in the Engineering Service. The said notification dated 06.12.1988 had also indicated that the placement of officers and staff, fixation of the inter-se seniority, procedure for execution of civil works etc. will be recommended by the expert committee and would be notified by the Works & Housing Department separately. For ready reference the Notification dated 16th December, 1988 is quoted herein below:--

"Government of Nagaland Personnel and Administrative Reforms Department
Administrative Reforms Branch Notification

No. AR-13-6-88

Dated Kohima 16th December 88. On the recommendation of the expert committee appointed by the Government vide Notifications No. CON-51-86 Dated 5.9.1986 and No. CON-51-86 dated 17.12.1986 the Governor of Nagaland is pleased to order amalgamation of all Engineering wings attached to various Government Departments of Nagaland, except the Departments of Nagaland State Transport, Geology and Mining and Agriculture, into one Department namely, Works and Housing Department with effect from 1.4.1989.

Consequent upon the amalgamation as ordered above, the Governor of Nagaland is also pleased to order that all the posts of the Engineering Wings in various Departments shall form a combined cadre with respective cadre post in the Engineering Service of the Works and the Housing Department, with effect from the date of amalgamation. The Governor is further pleased to order that the incumbents holding the post which have been now encadred shall be deemed to have been duly appointed to various posts in the different cadres in the Engineering service.

Placements of officers and staffs, fixation of their inter se seniority, procedure for execution of civil works etc. will be as recommended by the expert committee and will be Notified by the Works and Housing Departments separately.

Sd/- Z. Obed

Chief Secretary to the Govt. of Nagaland."

4. In terms of the aforementioned notification dated 16.12.1988, the Commissioner & Secretary to the Government of Nagaland in the Department of Works and Housing (Establishment Branch) had issued a separate notification dated 18.01.1989, inter alia, laying down the modalities to be adopted for encadrement of Engineering Wings of various departments with the newly created Engineering Department as well as for fixation of inter- se seniority of officers and staff of various wings on amalgamation with the Engineering Department. The guidelines laid down for fixation of inter- se seniority of officers recruited by the Departments having Engineering Wings on absorption in the PWD common cadre had been mentioned in paragraphs 3(iv) & 3(v) of the Notification dated 18.01.1989 is quoted herein below:--

"(iv) In respect of persons recruited by the Departments having Engineering Wings on absorption in PWD/Common cadre the date of qualified entry i.e. the date of regular appointment in the service at a particular level will be taken into account to determine the inter-se seniority as per general principles of seniority as are applicable in the state.

(v) In case of persons recruited either by the Development Department on contract or on ad hoc basis, their services may either be regularized or terminated depending on the merit of each case. Their seniority shall be only from the date of regularization in service."

5. Thereafter, the respondent authorities published a memorandum dated 27.01.1993 circulating the tentative seniority list of Sub-Divisional Officers under the Nagaland Public Works Department as on 05.09.1992. Although the said list contained the names of the respondent Nos. 6 to 26 at Sl. Nos. 27, 28, 29,30, 31, 32, 34, 35, 36, 71, 72,73, 74, 75, 76, 78, 79, 81, 82, 83, 84 and 86 respectively, yet the name of the writ appellant did not appear in the said seniority list. Despite the fact that the name of the writ appellant was not included in the aforesaid provisional seniority list dated 27.01.1993, yet, no objection was apparently raised by the appellant on such account.

6. On 04.05.1993 the appellant was given officiating promotion to the post of Executive Engineer against a vacancy caused due to suspension of one Mr. R.K. Roy by issuing order bearing No. WH/EST/47/90(IV) dated 04.05.1993. By a separate notification also dated 04.05.1993 the respondent Nos. 6, 7 and 8 herein and four others were also given officiating promotion to the post of Executive Engineer.

7. Being aggrieved by the order dated 04.05.1993 by means of which the writ

appellant was given officiating promotion to the post of Executive Engineer, a writ petition being Civil Rule No. 120(K)/1993 was instituted by the respondent No. 1 i.e. the Direct Recruit SDO/Assistant Engineers Union as the writ petitioner No. 1. The writ petitioner Nos. 2, 3, 4 and 5 in the said writ petition were the President, Vice-President, General Secretary and Joint Secretary of the petitioner no 1 Association. The present appellant was impleaded as respondent No. 3 in the said writ petition. The primary grievance of the writ petitioners in Civil Rule No. 120(K)/1993 was that the members of the said Association being direct recruits to the post of SDO/Assistant Engineer under the Works Department their entry to the service was pursuant to a proper selection conducted by the NPSC in accordance with the Rules. On the contrary, the initial entry of the writ appellant (respondent No. 3) in the post of Draftsman Grade-I as well as his subsequent promotions to the post of Assistant Engineer and thereafter the officiating promotion to the post of Executive Engineer made by the order dated 4.5.1993 was dehors the Rules. The entry in the service as well as the subsequent promotion given to the writ appellant (respondent No. 3) being dehors the Rules, the same cannot confer any seniority upon him ahead of the direct recruits i.e. the writ petitioners.

8. After hearing the parties and taking note of the pleadings, the learned Single Judge had disposed of Civil Rule No. 120(K)/1993 by the judgment and order dated 20.02.1995 holding that the respondent no 3 shall be deemed to be from the promotion quota with a further direction to constitute a DPC within a period of three months for the purpose of filling up of the vacancies in the grade of Executive Engineer including the post that was being held by the writ appellant.

9. In the meantime, by an order dated 16.02.1998 issued by the Secretary to the Government of Nagaland, Works and Housing Department, the services of the writ appellant in the grade of Assistant Engineer under Nagaland Engineering Service was regularized with effect from 06.03.1987 (FN). In the said order it was also mentioned that the seniority of the writ appellant in the cadre of Assistant Engineer, PWD, will be at Serial No. 13 of 1987 batch and he will be deemed to belong to the promotee quota. It appears that subsequently taking note of the directions passed by the learned Single Judge in Civil Rule No. 120(K)/1993 by the judgment and order dated 20.02.1995 another notification dated 12.10.1998 was issued in supersession of the earlier order dated 16.02.1998 thereby regularizing the services of the writ appellant in the grade of Assistant Engineer in Nagaland Engineering Service with effect from 01.04.1989 (FN). In the said order dated 12.10.1998 it was also mentioned that the inter-se seniority of the engineers in the service shall be determined in accordance with the Rules effective as on date of the issuance of the order.

10. The writ appellant had preferred a Review Petition No. 5(K)/1998 against the judgment and order dated 20.02.1995 passed in Civil Rule No. 120(K)/1993 seeking review of the aforementioned order on the ground that the same was passed without due service of notice upon the appellant. By the order dated

29.11.1999 Review Petition No. 5(K)/1998 was dismissed by the learned Single Judge by rejecting the prayer made by the appellant.

11. Thereafter, on 21.06.2005, the Secretary to the Government of Nagaland, Works and Housing Department, had circulated the minutes of the DPC dated 13.06.2005 recommending the regularization of the services of appellant in the post of Executive Engineer with effect from 14.05.1993. Accordingly, the appellant was regularized as Executive Engineer with retrospective effect from 14.05.1993. In the meantime, the appellant had also preferred Writ Appeal No. 1(K)/2003 challenging the order dated 29.11.1999 passed in Review Petition No. 5(K)/1998 which was however, dismissed by the Division Bench of this Court by the order dated 03.03.2006.

12. On 19.06.2006 the Principal Secretary to the Government of Nagaland issued an order under Memo No. WH/EST/28/83/Pt-III publishing the list of 49 officers whose promotion to the post of Executive Engineer under the Nagaland Public Works Department was regularized with effect from the date of regularization shown against their name. On the basis of the order dated 19.06.2006 the promotion of the writ appellant was shown to have been regularized in the post of Executive Engineer with effect from 13.05.1993. The promotion of the private respondent Nos. 6 to 26 were also regularized in the post of Executive Engineer with effect from the dates shown against their respective names.

13. Being aggrieved by the regularization of promotion of the appellant in the post of Executive Engineer with effect from 13.05.1993 the private respondents represented before the authorities to reconsider the said decision. One Limatondong Jamir had submitted a representation before the Government requesting for review of the order by which promotion given to the writ appellant to the post of Executive Engineer was regularized with effect from 13.05.1993. During the pendency of the said representation, promotions were also given of respondent Nos. 1, 2 and 3 to the post of Executive Engineer. Subsequently, the other private respondents were also promoted to the rank of Executive Engineer.

14. On 22.01.2007 the appellant had approached the Hon"ble Supreme Court of India by filing Civil Appeal No. 388/2007 challenging the order dated 03.03.2006 passed in Writ Appeal No. 1(K)/2003. By the order dated 22.01.2007 the Hon"ble Apex Court had set aside the order passed by the Division Bench of this Court and remanded the matter to be heard afresh on merit.

15. In the meantime, being inter-alia aggrieved by the non-disposal of the representation dated 31.07.2006 the private respondents had approached this Court by filing WP(C) No. 165(K)/2005 challenging the order dated 19.06.2006 by means of which the officiating promotion of the appellant to the post of Executive Engineer was regularized with effect from 13.05.1993. By the order dated 10.10.2007, the learned Single Judge of this Court had disposed of WP(C) No. 165(K)/2007 with a direction to the concerned authorities to consider and dispose of the representation filed by the said respondents by issuing a speaking

order within a period of one month from the date of receipt of a certified copy of the order.

16. Meanwhile, in terms of the order dated 22.01.2007 passed by the Hon'ble Supreme Court, the Writ Appeal No. 1(K)/2003 was finally heard by the Division Bench of this Court and thereafter by the judgment and order dated 25.02.2010 the Writ Appeal No. 1 (K) of 2003 was allowed by setting aside the judgment and order dated 20.02.1995 passed in Civil Rule No. 120(K)/1993 and the matter was remanded for a fresh decision of the writ petition on merits after hearing both sides. By a separate order Writ Appeal No. 8(K)/2007 preferred by the appellant against the judgment and order dated 20.02.1995 in Civil Rule No. 120 (K)/1993 was also disposed of accordingly.

17. While the matter was resting at thus and Civil Rule No. 120(K)/1993 was pending disposal having been revived by the aforesaid order dated 25.02.2010, the Departmental Promotion Committee held a meeting on 16.03.2010 and recommended regularisation of promotion of the appellant to the post of Executive Engineer with effect retrospective from 06.07.1994 by reviewing the effect earlier given to such promotion in case of the appellant with effect from 13.05.1993 as indicated in the order dated 19.06.2006 taking note of the fact that the initially the said promotion was given to the appellant even before completion of the period of seven years in the post of Assistant Engineer/SDO which was a requirement under the Nagaland Engineering Service Rules. On the basis of the said recommendation a separate notification dated 18.03.2010 had been issued by the authorities giving effect to the regularization of the promotion given to the appellant in the post of Executive Engineer from with effect from 06.07.1994.

18. Being thus aggrieved with the DPC recommendation dated 18.03.2010 the respondent Nos. 6 to 26 as writ petitioners had instituted WP(C) No. 60(K)/2010 before this Court, inter alia, challenging the notification dated 16.03.2010 as well as 18.03.2010 by means of which the officiating promotion of the appellant to the post of Executive Engineer had been regularized with retrospective effect from 06.07.1994. In the said writ petition the petitioners had also prayed for a direction upon the respondent authorities to regularize their promotion to the grade of Executive Engineer with effect from their respective dates of completion of seven years of service in the grade of Assistant Engineer. It appears from the record that during the pendency of the aforementioned proceedings before this Court, the writ appellant was also given officiating promotion to the post of Superintending Engineer by order dated 13.07.2011.

19. After hearing the parties, the learned Single Judge had partly allowed the writ petitions bearing Civil Rule No. 120(K)/1993 by the impugned judgment and order dated 09.05.2012, inter alia, holding that since the writ appellant (i.e. respondent no 3 in Civil Rule No. 120(k)/1993) did not face any selection process when he was initially appointed as Draftsman Grade-I and in view of the fact that his officiating promotion given on 06.03.1987 to the post of Assistant Engineer

was subject to regularization of the Departmental Promotion Committee, hence the date of regular appointment of the appellant as Assistant Engineer has to be reckoned with effect from 01.04.1989 i.e. the date from which the amalgamation took effect and not with effect from 06.03.1987 as claimed by the appellant. On the basis of such observations the order dated 04.05.1993 granting officiating promotion to the respondent No. 3 was set aside. The learned Single Judge, however, declined to entertain the challenge made by the writ petitioners questioning the legality and validity of the order dated 20.06.1986 and 06.03.1987 on the grounds that the departmental Commissioner who had issued the said orders was not made a party to the writ proceedings so as to give him an opportunity to explain the circumstances under which the said orders had been issued.

20. In so far as the challenge made in WP(C) No. 60(K)/2010, the learned Single Judge had also partly allowed the said writ petition by setting aside the orders dated 16.03.2010 as well as 18.03.2010 holding the same as illegal in view of the decision arrived at in connection with Civil Rule No. 120(K)/1993 taking the view that the regular appointment of the appellant could be given effect to only from 01.04.1989 on which date he was holding the post of Assistant Engineer and therefore, the order dated 04.05.1993 giving officiating promotion to the appellant to the post of Executive Engineer was held to be illegal. However, the prayer made by the respondent no 6 to 26 (writ petitioners in W.P. (c)60(K)/2010) forgiving effect to their promotion to the grade of Executive Engineer from their respective dates of completing 7 years of service in the grade of Assistant Engineer had been declined by the learned Single Judge.

21. Being aggrieved by the common judgment and order dated 09.05.2012, the appellant had preferred Writ Appeal No. 6(K)/2012 arising out of Civil Rule No. 120(K)/1993 as well as Writ Appeal No. 5(K)/2012 arising out of WP(C) No. 60(K)/2010. No appeal, however, has been preferred by the Respondent No. 6 to 26 against the said judgment and order dated 09.05.2012.

22. Heard Mr. S. Dutta, learned Senior Counsel appearing for the appellant in both the cases. Also heard Mr. A. Zhimomi, learned counsel appearing for the private respondents as well as Mr. K. Sema, learned Additional Advocate General, Nagaland, representing the State respondents.

23. Placing heavy reliance on the notification dated 16.12.1988 Mr. Dutta, learned counsel for the appellant, submits that from the language used in the said notification it is apparent that the appellant stood absorbed in the combined cadre of the Works Department on the basis of the substantive post that he was holding on the date on which the said notification had come into effect. The usage of the expression "duly appointed" in the notification dated 16.12.1988 read in the context of the supervening developments would have to be understood and interpreted as having validated the appointment of the writ appellant to the substantive post which he was holding prior to coming into effect of the combined cadre. Such being the position, the question as to the legality

and validity of the appointment of the appellant to the post of Draftsman Grade-I and the subsequent promotion given to the post of Assistant Engineer need not be re-visited by this court as the same stood permanently resolved with the coming into effect of the combined cadre on the strength of the notification dated 16.12.1988.

24. By relying upon a decision of the Hon"ble Apex Court in the case of H.L. Trehan and Others Vs. Union of India (UOI) and Others, , Mr. Dutta further submits that in view of the term " duly appointed " used in the said notification, the integration of the appellant into the combined cadre will have to be understood as having accepted the fact that the appointment of the appellant to the initial post was a legitimate one. He further submits that even if there was any doubt on the above issue the same would stand resolved in favour of the appellant due to the usage of the word " decree " in the context of the notification dated 16.12.88. He therefore, submits that with the creation of the combined cadre the seniority of the officers will have to be determined having regard to their length of service reckoned from the date of initial appointment in the post held in the respective cadre before the amalgamation took effect.

25. Mr. Dutta further submits that once the challenge made to the notification dated 20.06.1986 as well as 06.03.1987 was rejected by the learned Single Judge and the same having attained finality the question of seniority of the writ appellant has to be essentially determined having due regard to the guidelines laid down in paragraph 3(iv) of the notification dated 18.01.1989. The criteria laid down by the said notification dated 18.01.1989 being the date of regular appointment in a service at a particular level, the claim of inter-se seniority of the writ appellant vis-?-vis the direct recruits have to be determined having due regard to the length of service.

26. Per contra, Mr. A. Zhimomi, learned counsel for the private respondents, submits that even though no appeal has been preferred by his clients against judgment and order dated 09.05.2012 passed by the learned Single Judge yet, as would be evident from a complete reading of the judgment and order under appeal the said challenge was turned down primarily on the technical ground of non-joinder of the concerned departmental Commissioner. Despite having declined the challenge made to the orders dated 20.06.1986 and 06.03.1987 the learned Single Judge has rightly observed that no benefit could be given to the petitioner for the period of service rendered prior to 01.04.1989 as the said period of service was de hors the Rule.

27. Mr. Zhimomi submits that the learned Single Judge has further held that the service of the writ appellant would be deemed to have been regularized with effect from 01.04.1989 and not from any date prior to the same. Therefore, no benefit can be given to the writ appellant for the period of service prior to 01.04.1989 for the purpose of determining the inter-se seniority. He submits that the view taken by the learned Single Judge is in consonance with the established principles of service law jurisprudence in the matter of seniority and the same

does not call for any interference by this court.

28. By placing reliance on a judgment and decision of the Hon"ble Apex Court reported in M.P. State Coop. Bank Ltd., Bhopal Vs. Nanuram Yadav and Others, Mr. Zhimomi contends that appointments made without following due procedure and without issuing any advertisement through an open selection would be in breach of Articles 14 and 16 of the Constitution of India and hence would be illegal. He submits that in the instant case it is apparent on the face of the record that the writ appellant is a beneficiary of an illegal appointment which was done without following any selection process. A person who is a beneficiary of an illegal appointment cannot claim seniority over persons who have been legally recruited by following the due process of law. In support of his aforesaid argument, Mr. Zhimomi has placed reliance on the following decisions of the Hon"ble Apex Court:

- "1) Secretary, State of Karnataka and Others Vs. Umadevi and Others,
- 2) Ahmedabad Municipal Corporation Vs. Virendra Kumar Jayantibhai Patel,
- 3) Dani Belo Vs. State of Arunachal Pradesh and Others,
- 4) Nitoli and Others Vs. State of Nagaland and Others,
- 5) 2011 (5) GLT 751, para 15 [Biswajeet Dey & Ors. v. State of Assam & Ors.] .
- 6) State of Bihar Vs. Upendra Narayan Singh and Others,
- 7) (2005) 12 SCC 495 [Manjit Kaur & Ors. v. Salvation Army Macrobert Hospital]"

29. The learned counsel representing the private respondents further submits that it is settled law that no person can be promoted to a post with retrospective effect from a date when he was not even borne in the cadre, thereby adversely affecting the interest of others. In support of his contention Mr. Zhimomi has relied upon the decision in the case of State of Bihar and others Vs. Sri Akhouri Sachindra Nath and others, .

30. Mr. K. Sema, learned Additional Advocate General, Nagaland, has fairly submitted that since the State has not preferred any appeal against the impugned judgment and order passed by the learned Single Judge, hence save and except reiterating the stand taken in the counter-affidavit filed in connection with the writ proceedings, he would not like to advance any other submission on behalf of State. From a perusal of the records it appears that the State respondents had taken the stand that the writ appellant (respondent No. 3 in the writ proceeding) was appointed as a Draftsman Grade-I on regular basis by the competent authority and he was promoted to the substantive vacant post of Assistant Engineer as he possesses the requisite qualification of degree in Civil Engineering. It was further stated that the omission to reflect the name of the writ appellant in the tentative seniority list was by mistake and oversight and not because the writ appellant was not a regular member of the combined cadre in the Works and Housing Department. It was also the stand of the official

respondents that the appointment of the writ appellant to the post of Draftsman Grade-I and his subsequent promotion to the post of Assistant Engineer/SDO in the Civil Administration Works Department (CAWD) stood regularized in terms of the amalgamation order and as such there was no further requirement of passing any separate order of regularization of the appointment/promotion of the appellant in the posts held by him.

31. We have considered the submissions made by and on behalf of the parties and have also perused the record, From a close scrutiny of the judgment and order under appeal it appears that the learned Single Judge was of the view that since the appellant had not faced any selection process when he was initially appointed as a Draftsman Grade-I having regard to the fact that the officiating promotion given to the appellant as Assistant Engineer on 06.03.1987 was also made subject to regularisation hence, it cannot be said that the appellant was regularly appointed as Assistant Engineer as on 06.03.1987. It was further observed that although the notification dated 06.12.1988 did not validate the appointment of the appellant in the department having Engineering Wings yet, the same ordains that incumbents holding posts in the Engineering wing in the various departments shall be considered to be duly appointed to the various post in the Engineering service. As such, the date of regularisation of the appointment of the appellant as Assistant Engineer has to be deemed to have taken effect from 01.04.1989, i.e. the date on which the amalgamation took place and not 06.03.1987, having held so, the learned Single Judge had gone on to observe that since the appellant has been held to have been duly appointed in terms of notification dated 06.12.1988 with effect from 01.04.1989 hence, the question of further regularisation of his service did not arise.

32. Having held as above, the learned single judge was also of the view that since the Rules required minimum period of seven years service for a Engineering Degree holder in the feeder cadre for being considered for promotion from the post of Assistant Engineer to the post of Executive Engineer, hence, reckoned from 01.04.1989 the appellant did not complete the requisite length of seven years of service for being promoted to the post of Executive Engineer with effect from 04.05.1993. As a matter of fact, the appellant had not completed seven years of service even with effect from 20.06.1986 i.e. the date of his initial appointment. Accordingly, the order dated 04.05.1993 was set aside by the learned Single Judge the same being contrary to the relevant rules.

33. It is not in dispute that initial appointment of the appellant as Draftsman Grade-1 was not in pursuance to any selection process. When the appellant was promoted to the post of Assistant Engineer by the order dated 06.03.1987 i.e. within nine months of his initial appointment as Draftsman Grade -1 the Nagaland Engineering Service (Class-I and II) Rules, 1984 was in force. Even the promotion granted to the appellant to the post of Assistant Engineer vide order dated 06.03.1987 was in violation of the said Rules. It has been held by the Hon"ble Apex Court in the case of Indian Drugs and Pharmaceuticals Ltd. Vs.

Workman, Indian Drugs and Pharmaceuticals Ltd., that regularisation cannot be a mode of appointment. It has also been observed that regularisation can only be done in accordance with the rules and not dehors the rules. In the case of M.P. State Coop. Bank Ltd. Bhopal (supra) the Hon''ble Apex Court has held that appointment made without following appropriate procedure under the rules/government circulars and without advertisement or inviting applications from the open market would amount to breach of Articles 14 and 16 of the Constitution of India.

34. In the case of Rupa Rani Rakshit and Others Vs. Jharkhand Gramin Bank and Others, , the Hon''ble Apex Court has held that if an appointment or promotion is made without considering the claim of all available eligible candidates and/or without following the relevant rules, the service rendered in pursuance of such illegal appointment or promotion cannot be equated to the service rendered in pursuance of an appointment or promotion validly made. In view of the law laid down by the Hon''ble Apex court as noticed above, we are of the considered opinion that the initial appointment of the appellant in the post of Draftsman Grade -1 and his promotion to the post of Assistant Engineer by the order dated 06.03.1987 was dehors the rules and in breach of Articles 14 and 16 of the Constitution of India. Therefore, no credit can be given to the appellant for the said period of service while determining his inter-se seniority in the combined cadre. Upholding the promotion order dated 06.03.1987 would amount to nullifying the effect of the rules.

35. Notwithstanding the fact that appointment of the appellant to the post of Draftsman and subsequent promotion to the post of Assistant Engineer made on 06.03.1987 were found to be dehors the rules, on the liberal construction of the Notification dated 16.12.1988 the learned Single Judge has interpreted the same to the benefit of the appellant by holding that his appointment to the post of Assistant Engineer stood regularised with effect from 01.04.1989 and as such there would be no further requirement for regularisation of the service of the appellant. The view taken by the learned Single Judge in the facts and circumstances of the case appears to be just and reasonable one. Even if two views are possible, this court would not to interfere with the view taken by the Single Judge. Moreover, in the absence of any appeal having been preferred by the respondents/writ petitioners against the judgment and order dated 09.05.2012 we are not inclined to disturb the conclusion drawn by the learned Single Judge on the aforesaid issue.

36. Coming to the facts of WP(C) No. 60(K)/2010, it is apparent that the decision rendered in respect of the issues arising out of Civil Rule No. 120(K)/1993 would have a cascading effect on the contentious issues involved in WP(C) No. 60(K)/2010 inasmuch as the fate of the orders dated 16.03.2010 as well as 18.03.2010 under challenge in WP(C) No. 60(K)/2010 would essentially depend on the findings and conclusions recorded by the learned Single Judge in Civil Rule No. 120(K)/1993. Onathreadbare discussion of the facts and circumstances of

the case as well as the cumulative effect of the various notifications issued by the respondent authorities from time to time seeking to regularize the officiating promotion given to the writ appellant (respondent No. 4 in the writ petition) to the post of Assistant Engineer, Executive Engineer as well as Superintending Engineer, the learned Single Judge had found that such orders were illegal, the same being contrary to the service Rules as well as the established principles of service jurisprudence. The observation of the learned Single Judge in paragraphs 60 to 63 of the judgment are quoted herein below for ready reference:--

"60. In Chandra Kishore Singh (supra), in paragraph 15 on which the learned counsel for the respondent No. 4 placed reliance, the Supreme Court states as follows:

"it is now well settled that even in the case of probation or officiating appointments which are followed by a confirmation unless a contrary rule is shown, the service rendered as officiating appointment or on probation cannot be ignored for reckoning the length of continuous officiating service for determining the place in the seniority list. Where the first appointment is made by not following the prescribed procedure and such appointee is approved later on, the approval would mean his confirmation by the authority and shall relate back to the date on which his appointment was made and the entire service will have to be computed in reckoning the seniority according to the length of continuous officiation. In this regard we fortify our view by the judgment of this Court in G.P. Doval v. Chief Secy., Govt. of U.P."

61. From the aforesaid observation of the Supreme Court, it is clear that when the first appointment is not made by following prescribed procedure and such an appointment is approved later on, the approval would mean his confirmation by authority and the same shall relate back to the date on which his appointment was made and the entire service will have to be computed in reckoning the seniority according to the length of continuous officiation. In the instant case, approval of the officiating promotion of the respondent No. 4 as Assistant Engineer/SDO was granted by the notification dated 16.12.1998 with effect from 01.04.1989 and therefore, in the facts of the case, 06.03.1987 cannot be reckoned as the starting point for computation of seniority of the respondent No. 4. The DPC held on 16.03.2010 recommended promotion to the respondent No. 4 in the grade of Executive Engineer with effect from 06.07.1994 on the basis that the respondent No. 4 was given regular appointment as Assistant Engineer/SDO on 06.03.1987. As it has been held by this Court that the service of respondent No. 4 as Assistant Engineer/SDO has been regularized with effect from 01.04.1988, in terms of the notification dated 16.12.1988, the recommendation of the DPC dated 16.03.2010 are liable to be set aside and quashed and as such the recommendation of the DPC dated 16.03.2010 and the order dated 18.03.2010 are set aside and quashed. Decision in Pongrem Arangan (supra) does not help the case of the respondent No. 4 inasmuch as the very basis on which the DPC proceeded to make the recommendations has

been found to be not sustainable in law.

62. Consequent upon setting aside of the recommendation of the DPC held on 16.03.2010, whereby seniority position of the respondent No. 4 was also assigned, appropriate steps now be taken by authorities to fix the seniority position of the respondent No. 4 in terms of the observations made by this Court. The State respondents are also directed to convene a meeting of the Departmental Promotion Committee to recommend promotion of the respondent No. 4 as Executive Engineer in the light of and consistent with the observations of this Court.

63. As a fall out of the discussions aforesaid, officiating promotion granted to respondent No. 4 to the post of Superintending Engineer on 13.07.2011 is also quashed."

37. Once it has been held that the date of regular appointment of the appellant would be 01.04.1989, it is axiomatic that the inter-se seniority of the appellant in the combined cadre of Assistant Engineer/SDO is required to be determined having regard to the length of service bearing in mind the guidelines laid down in paragraph 3(iv) of the Notification dated 18.01.1989. Since, the said exercise is yet to be carried out by the authorities hence, the subsequent promotions of the appellant to the post of Executive Engineer and Superintending Engineer cannot be held to be valid. We are, therefore, in agreement with the views expressed by the learned Single Judge holding that the notifications dated 16.03.2010 and 18.03.2010 were not sustainable on account of the findings and conclusions recorded in connection with Civil Rule No. 120(K)/1993. Consequently, the Notification dated 13.07.2011 also cannot stand in the eye of law. In view of the discussion made in the foregoing paragraphs, we hold that the Writ Appeal No. 5(K) of 2012 and Writ Appeal No. 6(K) of 2012 are devoid of any merit and consequently the same stand dismissed. The Departmental authorities will now carry out the exercise as directed by the learned single judge in paragraph 62 of the impugned judgment and order dated 09.05.2012 by notionally fixing the seniority of the appellant within a period of three months from the date of receipt of a copy of this order by taking the date of regular appointment of the appellant to the post of Assistant Engineer in the combined cadre as 01.04.1989. Thereafter, the entitlement of the appellant for promotion to the higher grades be considered by the authorities in accordance with the rules.

There will be no order as to cost.