
(2003) 11 BOM CK 0056
In the Bombay High Court
Case No : Writ Petition No. 589 of 1992

Nandkishor Zade

APPELLANT

Vs

Punjabrao Krishi Vidyapeeth and others

RESPONDENT

Date of Decision : 19-11-2003

Acts Referred:

Citation : (2003) 11 BOM CK 0056

Hon'ble Judges : V.C. Daga, J;S.B. Deshmukh, J

Bench : Division Bench

Advocate : R.V. Gaikwad, for the Appellant; U.A. Patil, For respondent Nos. 1 and 3, A.M. Gordey, for the Respondent

Final Decision : Dismissed

Judgement

V.C. Daga, J.—This petition is directed against the seniority list wherein the petitioner is shown junior to the respondent No. 2. Petitioner contends that the said seniority list is liable to be quashed and set aside and petitioner is liable to be treated as senior to respondent No. 2. The petitioner, by way of consequential relief, is also seeking to quash the promotion of respondent No. 2 given to him vide order dated 27-3-1992 during the pendency of this petition.

2. In order to appreciate the controversy involved in the petition, it is necessary notice undisputed facts, which are as under :-

Facts:

3. The petitioner on 30th August, 1982 came to be appointed as Assistant Professor of Bacteriology under emergency powers of the Vice Chancellor vide proviso to statute 51(1) of Punjabrao Agricultural University (Krishi Vidyapeeth) Statute 1969 (hereinafter referred as "the Statute" for short). He reported and joined on the said post on 10-9-1998. The salient features of the said appointment order incorporated at "Annexure-I" are as under :-

(i) The appointment is to the post of Assistant Professor of Bacteriology.

(ii) The appointment is on temporary basis only as stop gap arrangement or till the appointment of suitable candidate is made in accordance with the provisions of the Statute and regulations made in that behalf whichever event occurs first.

(iii) The period of appointment is one year from the date of joining subject to the approval of the selection committee. In the event of non approval by the selection committee, appointment is liable to be terminated even before the expiry of period of one year.

(iv) The appointee shall have no right to claim seniority or regularisation or any other claim whatsoever. He will have to apply for the post as and when the post is advertised by the University.

(v) The appointment was accepted by the petitioner without keeping any reservation whatsoever.

4. The second appointment order came to be issued on 19th March, 1983 on temporary basis in exercise of powers conferred under Statute 51(1) in continuation of the earlier appointment with a specific condition that the appointee shall be continued on the said post till the posts are filled in by normal recruitment procedure by selection committee and that the appointee will have to apply for the post as and when advertised by the University.

5. The selection committee interviewed the petitioner on 24-1-1983 and by Resolution No. AS/7/83 resolved to approve the action taken by the Vice Chancellor regarding appointment of the petitioner by nomination in exercise of emergency powers conferred by the Statute and further resolved to continue the petitioner on the post of Assistant Professor of Bacteriology until the post is filled in by the selection committee by nomination on regular basis.

6. On 4-9-1982, the respondent No. 1 out of two advertised only one post of the Assistant Professor of Bacteriology and invited applications from the interested candidates. In pursuance of this advertisement, the petitioner and respondent No. 2 both applied for the said post. Both the applicants i.e. the petitioner and respondent No. 2 were found eligible in pursuance to the advertisement issued. They were invited for interview. They were interviewed by the selection committee on 23-5-1983. The selection committee resolved to recommend to the Vice Chancellor the names of the two candidates i.e. the petitioner and respondent No. 2 in the order of merit for being appointed to the said post of Assistant Professor of Bacteriology. The details of the merit list, which can be termed as waiting list, are as under :-

(i) Shri D.R. Kalorey ..(First) - respondent No. 2. (ii) Shri N.N. Zade ..(Second)- the petitioner.

7. In pursuance of the aforesaid resolution of the selection committee and taking into account the merit list, an order of appointment came to be issued in favour of the respondent No. 2 appointing him on the post of Assistant Professor of Bacteriology; vide appointment order dated 16th July, 1983, which specifically

mentions that the appointment is purely temporary and on probation for a period of one year. The said appointment came to be made in exercise of powers conferred under Statute 51 read with sub-clause (vi) of Clause (1) of the Statute 53 on the recommendation of the selection committee which had recommended the candidates.

8. On the same day, i.e. 16th July, 1983, third appointment order came to be issued in favour of the petitioner, which specifically stipulates that the appointment of the petitioner is purely on temporary basis on the same terms and conditions mentioned in the earlier orders and that the appointment is made in continuation of the previous appointments.

9. It would thus be clear that on 16th July, 1983, two appointment orders came to be issued. One in favour of the respondent No. 2 appointing him on purely temporary basis and on probation for a period of one year, whereas the appointment of the petitioner is only on temporary basis in continuation of the previous orders on the same terms and conditions.

10. On 5th July, 1990, the provisional subjectwise seniority list of the academic staff members in the cadre of Assistant Professor appointed till 31-3-1990 came to be published vide Notification No. BBD/4790.

11. The aforesaid Notification specifically indicated that the seniority list was prepared and published determining the seniority of the persons appointed by the University with reference to the date of their appointment order, date of joining and as per order of merit given by the selection committee. The said notification is produced on record as "Annexure-IV". The seniority list annexed thereof is produced at page 19 of the petition. The particulars of which are reproduced herewith.

Sr. No.

Name

Date of Birth

Date of order/ appointment promotion as A.P.

Nature Cat. of Apptt.

Remarks

1.

S. D. Harne

20-6-1949

20.4.1976

N* N

Officiating as Reader.

2.

D. R. Kalore

7-10-1955

16-7-1983

3.

N. N. Zade

1-8-1951

16-7-1983

*N = Nomination.

12. The aforesaid particulars would demonstrate that at Sr. No. 1, one S.D. Harne was shown senior to the persons appearing at Sr. Nos. 2 and 3 i.e. respondent No. 2 and the petitioner herein. Shri S.D. Harne retired on 2-11-1982. The aforesaid seniority list is a subject matter of challenge in the present petition at the instance of the petitioner, who is contending that since his appointment was prior in point of time than that of the respondent No. 2, he ought to have been shown senior to the respondent No. 2 and subsequent promotion given to him vide order dated 27-3-1992 as Assistant Professor should be quashed and set aside.

13. On being noticed, the respondents appeared. Respondent No. 1 filed its return contending that the petitioner cannot claim seniority and benefits from the first date of his appointment, which was made under emergency powers of the Vice Chancellor, since the appointment was purely ad-hoc and temporary by way of stop gap arrangement and that the appointment of the respondent No. 2 was in order of merit as per placement given by the selection Committee. That the appointment of the respondent No. 2 was on probation for a period of one year from the date of joining. It was further pleaded that the respondent No. 2 was appointed in preference to the petitioner since the merit list had placed the respondent No. 2 at Sr. No. 1 and the petitioner at Sr. No. 2. The respondent No. 1, therefore, has preferred the respondent No. 2 considering his placement in the merit list and was shown junior to the respondent No. 2 in the seniority list. It was further pleaded that there were two posts in the cadre of Assistant Professor of Bacteriology, out of which one was advertised for being filled on substantive basis in accordance with Rules. Two persons competed for the said post; namely, the petitioner and respondent No. 2. Out of them, respondent No. 2 was found meritorious over the petitioner with the result appointment order came to be issued in favour of the respondent No. 2. He came to be appointed on probation against the substantive post which was advertised by the University vide its advertisement dated 4-9-1982. It was further pleaded that with the retirement of

Shri S.D. Harne, the second post became available on which the petitioner came to be continued. That is now seniority given to the respondent No. 2 was sought to be justified by the respondent No. 1, University. The said return filed by the respondent No. 1 was adopted by the respondent No. 3. No separate return appears to have been filed by the respondent No. 2. The parties were heard on the basis of aforesaid pleadings on record. Submissions :

14. The learned Counsel for the petitioner submits that the petitioner has been singled out and given a discriminatory-treatment by refusing to give him seniority from the date of his first appointment dated 30-8-1982 or from the date of joining i.e. 10-9-1982. He further contends that the respondent Nos. 1 and 3 have wrongly given seniority to the respondent No. 2 disregarding rightful claim of the petitioner. He further submits that inter se seniority between the petitioner and respondent No. 2 could not have been determined in pursuance of the provisions of Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 as the said Rules have not been adopted by the respondent No. 1, University. Alternatively, he submits that, at any rate, the seniority of the petitioner ought to have been determined at least from the date of second appointment dated 19th March, 1982 since by then the advertisement for the post of Assistant Professor of Bacteriology was already published and that the petitioner was one of the applicants for the said post. He further submits that his initial period of appointment to the post of Assistant Professor being continuous, without any interruption till the regularisation of the services in accordance with the Rules, the period of officiating service ought to have been counted while determining seniority of the petitioner. The learned Counsel for the petitioner relied upon the Apex Court judgments in the cases of *The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others*, , *Rudra Kumar Sain vs. Union of India*, JT 2000 (9) SC 299, *Union of India vs. Lalitha Rao*, 2001 AIR SCW 1570, *Anand Kumar vs. Prem Singh*, 2000 III CLR 25 and *P. Mohan Reddy etc. Vs. E.A.A. Charles and Others etc.*, in support of his submissions.

15. Per contra, Smt. U.A. Patil, learned Counsel appearing for respondent Nos. 1 and 3 and Shri A.M. Gordey, learned Counsel appearing for respondent No. 2 while refuting the submissions made by the petitioner, advanced their submissions in consonance with the pleadings of the respondent Nos. 1 and 3. The respondents contended that appointment of the petitioner to the post of Assistant Professor having been made much prior to the advertisement, the same can hardly be said to be a regular appointment on substantive basis. Respondents pointed out that the appointment orders issued in favour of the petitioner from time to time specifically stated that the said appointments were made pending the regular selection by the selection committee. As such, the appointment of the petitioner was a stop gap, temporary or ad-hoc arrangement pending regular selection by the selection committee. In this view of the matter, according to the respondents, seniority of the petitioner was rightly determined from the date of his third appointment. It is further submitted that the petitioner

was neither entitled to his seniority from the date of his initial appointment which was on ad-hoc basis nor was he entitled to claim seniority from the date of his subsequent appointments as those orders were nothing but they were in continuation of the earlier orders on the same. It is further submitted that for the first time, the selection committee selected the petitioner and the respondent No. 2 on 23-5-1983. As such, prior to 23-5-1983, in no circumstance substantive appointment orders could have been issued either in favour of the petitioner or in favour of the respondent No. 2. It could only be issued after receipt of the report of the selection committee which itself is dated 23-5-1983. The Selection Committee selected the candidates in order of merit. In accordance with the said merit list or the waiting list the appointment order came to be issued in favour of the respondent No. 2. He was thus rightly shown senior to the petitioner.

16. Mr. Gordey, learned Counsel appearing for the respondent No. 2 submitted that the respondent No. 2 was appointed on probation, whereas petitioner was appointed temporarily on ad-hoc basis subject to selection by the regular selection Committee. He further submitted that the appointment orders issued from time to time specifically mentioned that the petitioner shall not be entitled to claim seniority or regular appointment unless selected by the regular selection Committee. He further submits that at no point of time petitioner was appointed on substantive basis on the substantive post as such petitioner by no stretch of imagination can be allowed to claim seniority over a person who appointed on substantive post, on substantive basis, on regular section by a regularly constituted Selection Committee, which adjudged respondent No. 2 more meritorious than the petitioner.

17. In the wake of the above submissions, the respondents contended that the petition is liable to be dismissed holding it to be without any merit. They placed reliance on the Apex Court's judgments in the cases of Masood Akhtar Khan and Others Vs. State of Madhya Pradesh and Others, ; Excise Commissioner, Karnataka and another vs. V. Sreekanta, 1993 Supp (3) SCC 53; State of Haryana Vs. Haryana Veterinary and A.H.T.S. Asson. and Another, ; UOI and Ors. v. Satish Chandra Mathur, 2001 (10) SCC 185 ; State of Punjab and others vs. Ishar Singh and others, AIR 2002 SC 2422; State of Bihar and Others Vs. Kameshwar Prasad Singh and Another, ; Rajiv Kapoor and Others Vs. State of Haryana and Others, ; A.J. Femandis vs. Divisional Manager. South Central Railway and others, (2001) 1 SCC 240; Ramesh Bhai J. Patel and others vs. Union of India, (2001) 1 SCC 243; and M.K. Shanmugam and Another Vs. Union of India and Others, .

Statutory Provisions :

18. Before appreciating rival submissions advanced by the parties, it is necessary to consider the provisions of the Statute 51 which provides for appointments. Statute 52 deals with the constitution of Selection Committee; whereas Statute 53 lays down procedure for appointment of academic staff.

Relevant provisions of statute 51 reads as under :- "Statute 51

(1) All appointments of the members of academic staff shall be made by the Vice-Chancellor strictly on merit and no person shall be appointed by the Vice-Chancellor as a member of the academic staff except on the recommendation of the Selection Committee constituted under Statute 52.

Provided that in any emergency which, in the opinion of the Vice-Chancellor, requires that immediate action should be taken, he may, without the recommendation of the Selection Committee or without following the procedure prescribed in the Statute 53, make appointment of a suitable person to any post of the academic staff member for a period not exceeding one year and shall at the earliest opportunity thereafter report his action to the Executive Council.

(2) Notwithstanding anything contained in clause (1), the Executive Council may direct that a post of academic staff member may be filled in by obtaining the services of a suitable person on deputation from the State Government, Government of India, Indian Council of Agricultural Research, Council of Scientific and Industrial Research, any statutory University in India, or any government or semi-government organisation or institution or a corporation established by law.

(3) Appointment of a person on deputation to any post of an academic staff member in pursuance of the provisions of clause (2) shall be made by the Vice-Chancellor without reference to or recommendation of the Selection Committee. Selection of such a person and his appointment as an academic staff member shall be made by the Vice-Chancellor on such terms and conditions as may be agreed to between the Vice-Chancellor and the deputing authority.

Provided that the period of such deputation shall, at the first instance, not exceed three years, which period may, at the option of the Vice-Chancellor in consultation with the deputing authority and with the prior approval of Executive Council, be extended from time to time for a total period not exceeding five years." Relevant provisions of Statute 53 reads as under :- "Statute 53

(1) The procedure for the appointment of academic staff members, when vacancies arise or when new posts are created, shall be as under, namely: i) The Vice-Chancellor, may invite suggestions and recommendations and, if considered necessary by him, proposals for obtaining services on deputation for a period not exceeding three years, from the State Government, Government of India, Institutions, agencies or any person as he deems fit and/or he may have the post advertised with such qualifications as have been prescribed by the Executive Council on the recommendations, if any, of the Academic Council.

(i).....

(iii).....

(iv) The Chairman shall scrutinize all such suggestions, recommendations, proposals and applications received and prepare a list of candidates who shall be

either called for interview or considered in absentia.

(v) After interviewing the candidates or considering them in absentia, as the case may be, the Selection Committee shall recommend to the Vice-Chancellor for each post, as far as possible, a panel of at least three persons in order of preference.

(vi) The Vice-Chancellor shall then make the appointment of a suitable person/ persons only from amongst the persons recommended by the Selection Committee.

19. The respondent No. 1, University has also framed Rules known as "Punjabrao Agricultural University (Krishi Vidyapeeth) Service Rules, 1971". Chapter-I of the said Rules provides for extent of application and interpretation thereof with other relevant provisions. Whereas Chapter-H provides for definition.

20. Chapter-XVII deals with Recruitment, Seniority, Conduct Discipline and appeal Rules. Rule 17.2 of Chapter-XVII lays down for all initial appointments made by the Vice-Chancellor shall be purely temporary and on probation in an officiating capacity against the permanent or temporary posts as may be vacant from time to time unless otherwise specifically mentioned in the appointment order and further continuance or otherwise of the persons in University services shall be subject to satisfactory completion or probationary period besides other conditions of service. Clause 17.7 of the said Rules lays down that the candidates selected for appointment by nomination or promotion shall be arranged by the Selection Committee in order of merit or preference recommended by them and the Vice-Chancellor shall unless he deems otherwise, issue appointment orders in order of such merit or preference. Clause 17.15 stipulates that the inter-se seniority of employees in a particular scale or grade or cadre shall be determined on the basis and in order of merit in which the employees are selected by the appropriate selection committee irrespective of the dates of appointments or joining against those posts provided specific period for joining is prescribed and appointment orders are issued in order of merit in the selection list.

Considerations :

21. Having heard the parties at length and having examined the provisions of the Statute and the Rules relevant for resolving dispute raised in the petition, it is clear that the petitioner was first appointed by an order dated 30th August. 1982 on temporary basis only as a stop gap arrangement or till the appointment of a suitable candidate is made in accordance with the provisions of Statute and Regulations. The said appointment was made in exercise of powers under proviso to clause (1) of Statute 51 which specifically provides that in any emergency which, in the opinion of the Vice Chancellor requires that immediate action should be taken, he may, without the recommendation of the Selection Committee or without following the procedure prescribed, in the Statute 53, make appointment of a suitable person to any post of the academic staff member for a period not exceeding one year and shall at the earliest opportunity

thereafter report his action to the Executive Council. It is thus clear that the first appointment order dated 30th August, 1982 issued in favour of the petitioner was purely ad-hoc and on temporary basis for a period of one year with a specific stipulation that the appointee shall have no right to claim seniority, regularisation or any other claims whatsoever by virtue of the said order and that he shall have to apply for the post as and when the post is advertised by the University. It is thus clear this appointment was not a substantive appointment but was under the emergency powers of the Vice Chancellor that too as a stop gap arrangement on purely temporary basis for a period of one year.

22. So far as second appointment order dated 19th March, 1983 is concerned, this appointment was also made in exercise of powers conferred under Statute 51(1) in continuation of the earlier temporary appointment order with specific stipulation that the appointment was purely on temporary basis and that the appointee shall hold the said post until posts are filled in by normal recruitment procedure by the selection committee and that the petitioner will have to apply for the post whenever advertised by the University. It is thus clear that even this second appointment was not a substantive appointment but was made on temporary basis in continuation of the earlier appointment that too in exercise of emergency powers of the Vice Chancellor.

23. The perusal of the first appointment order would further make it clear that the appointment was not only stop gap and temporary for a period of one year but was subject to the approval of the selection committee. If this was so, it was necessary for the petitioner to face the selection committee and to seek approval thereof even to his temporary appointment. The ad-hoc and temporary appointment of the petitioner was approved by the selection committee of the academic staff members in a meeting held on 24-1-1983 vide its resolution No. AS/7/83.

24. As against above, if we turn to the intervening event which took place on 4-9-1982, namely, publication of advertisement advertising one out of two posts of the Assistant Professor of Bacteriology calling upon interested candidates to apply for the said post. In pursuance of which the petitioner and respondent No. 2 both applied and they were invited for interview by a competent selection committee. The petitioner and respondent No. 2 both were selected in order of merit. The respondent No. 2 was placed at Sr. No. 1 and the petitioner was placed below respondent No. 2 at Sr. No. 2 since only two candidates had applied and interviewed by the selection committee to fill in the substantive post on substantive basis as per advertisement dated 14-9-1982. It would thus be clear that when the first appointment order dated 30th August, 1982 and second appointment order dated 19th March, 1983 came to be issued in favour of the petitioner, he did not face the selection committee which was supposed to select the candidates for the substantive appointment to a single post advertised by the University. In the wake of this undisputed facts, the first two appointment orders issued in favour of the petitioner can hardly be said to be substantive

appointments to the substantive post. Both these posts as such will have to be treated as purely temporary and ad-hoc basis made in the emergency powers by the Vice Chancellor.

25. With the aforesaid facts, if we travel further and we reach to the third appointment order which was issued in favour of the petitioner on 16th July, 1983. This appointment order is again appointed the petitioner on purely temporary basis in continuation of the previous appointments. When this appointment order was issued on 16th July, 1983, the University had received recommendation of the selection committee with merit list of the candidates for being appointed to the post of Assistant Professor of Bacteriology placing the respondent No. 2 at Sr. No. 1 and petitioner at Sr. No. 2.

26. On 16th July, 1983, two appointment orders were issued by University, one in favour of petitioner and another in favour of respondent No. 2. One which was issued in favour of the petitioner appoints him or continues him on the post on purely temporary basis; whereas the respondent No. 2 was appointed on temporary basis and on probation for a period of one year in the officiating capacity in pursuance of the recommendation of the selection committee. The said appointment was made in exercise of powers under sub-clause (vi) of Clause (1) of Statute 53 (though appointment order wrongly refers to Statute 51, which has no sub-clause (vi)). Sub-clause (vi) of Clause (1) of Statute 53 provides that the Vice Chancellor can make an appointment of a suitable person/ persons only from amongst the persons recommended by the Selection Committee. The said appointment order further refers to Rule 17.1 and Rule 17.2 of the Punjabrao Agricultural University (Krishi Vidyapeeth) Service Rules, 1971 which specifically lay down the procedure for recruitment and the nature of appointments to be made against the permanent posts. It is thus clear that the appointment of respondent No. 2 was on probation against a substantive post. As against this the appointment of petitioner was purely on temporary basis in continuation of the earlier appointments. With this backdrop, if one turns to the law laid down by the Apex Court, the Apex Court in the case of State of W.B. and Others Vs. Aghore Nath Dey and Others, has held that to enable seniority to be counted from the date of initial appointment, the incumbent of the post has to be initially appointed "according to the rules". Where the initial appointment is only ad-hoc and not according to the rules and made as a stopgap arrangement, the officiation on such post cannot be taken into account for considering the seniority. In that case the Court relied upon the judgment of the Constitution Bench in The Direct Recruit Class-II Engineering Officers' Association and others Vs. State of Maharashtra and others, , wherein it was held that if the initial appointment if not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service should be counted while determining seniority. This part of the judgment is also relied by the learned Counsel for the petitioner in support of his submissions. If the said part of the said judgment is to be applied then in that event the appointment of

appointee in the post should not be in accordance with the procedure laid down by the rules and such appointee should continue to hold the post uninterrupted till the regularization of his services in accordance with the rules, then only the period of officiating service can be counted while determining his seniority.

27. With the above understanding of the judgment, if one turns to the facts of the present case, it would be clear that the first two appointments of the petitioner on temporary and ad-hoc basis were made in accordance with the rules which can be seen from the preamble of the appointment orders issued on first two occasions in favour of the petitioner, wherein, it is specifically mentioned that in pursuance of the emergency powers conferred under proviso to clause (1) of the Statute 51 of PAU (KV) Statute, 1969, the appointments were made by the Vice Chancellor. Therefore, first and second ad-hoc appointments on temporary basis were in accordance with the rules. Whereas the third appointment order of the petitioner though mentions that the appointment made is temporary, however, it could not have been made on temporary basis since the petitioner was already selected by the competent Selection Committee "in its meeting held on 23-5-1983 and in the merit list his name was figuring at Sr. No. 2 i.e. next to the respondent No. 2. The appointment order was already issued in favour of the respondent No. 2 on 16th July, 1983 appointing him substantively on probation. On 16th July, 1983, the petitioner could have been appointed on probation since the second permanent post of the Assistant Professor in Bacteriology in the cadre was very much available for the petitioner. In spite of this, if the petitioner was appointed on temporary basis, the said appointment can hardly be said to be "in accordance with the rules.

28. On 16th July, 1983, there was no emergency existing for exercising emergency powers by the Vice Chancellor. There was no reason not to appoint the petitioner on substantive post on probation. He ought to have been given substantive appointment. By that time the selection committee had already recommended the name of the petitioner showing him at Sr. No. 2 in the merit list. In this view of the matter, the third appointment of the petitioner on temporary basis was not made by following the procedure laid down by the rules. The appointee, namely; the petitioner continued on the said post uninterrupted right upto the date of filing of this petition and thereafter. In this view of the matter, if the principles laid down by the Apex Court in the case of Direct Recruit Class II Engineering Officers" Association"s case as formulated in para 44 (B) of the said judgment are to be applied then, the period of officiating for the purpose of counting seniority will have to be counted from 16th July, 1983. If the seniority of the petitioner is counted in this manner, then say that the seniority of the petitioner was rightly fixed from 16th July, 1983. Such fixation of the seniority would be in consonance with the law laid down by the Supreme Court in the case referred to hereinabove.

29. Having said so, if we turn to the second case relied by the petitioner known as Rudra Kumar Sain and others vs. Union of India and others (cited supra), in

this case the promotees were appointed with in due consultation with the High Court having satisfied with the Rule 7. As such, the Apex Court held that such appointments cannot be termed as ad-hoc, fortuitous and stop gap arrangement. If one takes second look at facts of the present case, then it would be clear that the first two appointment orders issued in favour of the petitioner, namely; dated 30th August, 1982 and 19th March, 1983 were not in accordance with the procedure prescribed under the rules meant for substantive appointments. On the contrary, those appointments were temporary and on ad-hoc basis following the procedure and rules meant for that purpose. Therefore, the reliance placed on the judgment by the petitioner on Rudra Kumar Sain's case is misplaced. The petitioner also placed reliance on another judgment of the Apex Court in Union of India vs. Lalitha Rao (cited supra) which came to be decided on the basis of law laid down by the Apex Court in the Direct Recruits Engineering Officers' Association's case to which the reference has already been made hereinabove. The last judgment relied upon by the petitioner was in the case of Anand Kumar vs. Prem Singh and Others (cited supra). In this case, while fixing seniority between the two similarly circumstanced employees, the discrimination was practised and the finding was recorded that the respondent in that case was treated with uneven hands in the matter of fixation of seniority and the promotion given to the appellant in that case was found to be wrong. However, in this case, it cannot be said that the petitioner and the respondent No. 2 both were similarly circumstanced when first two appointment orders were issued in favour of the petitioner. As such, there was no question of making any discrimination between the petitioner and respondent No. 2.

30. The learned Counsel appearing for the respondents rightly relied upon the judgment in the case of Masood Akhtar Khan and others vs. State of Madhya Pradesh and others (cited supra), wherein the contention of the petitioners that they should be given seniority from the date of their initial appointment were repelled by the Apex Court relying upon the appointment order and advertisement wherein it was specifically made clear that the appointments were made pending regular selection by the selection committee and that the appointments were made by way of stop gap emergency arrangement pending regular selection by the selection committee. The Apex Court ruled that where the appointments are to be made in consultation with the Commission, the seniority should firstly be from the date of the selection by the Commission and secondly according to the order of merits given by the Commission. The Apex Court also ruled that where there is a requirement with the consultation of the Commission and seniority is required to be determined in accordance to the merit given by the Commission in such types of cases, the authorities of the Apex Court viz. Direct Recruit Class II Engineering Officers' Association would not be attracted and further ruled that the seniority of the appointee has to be counted not from the date of initial stop gap appointment from their regular selection under the rules and that the seniority should be given strictly in order of the merit fixed by the Commission. Similar is a view taken by the Apex Court

in the case of Excise Commissioner vs. V. Sreekanta (cited supra). The learned Counsel for the respondents also pressed into service the judgment of case of State of Haryana vs. Haryana Veterinary and AHTS Association (cited supra), wherein the stipulations made in the order of appointment itself was relied upon and held to be binding on the person accepting such appointment. The learned Counsel for the respondents based on the above judgments rightly contended that if the appointment orders specifically spell out that the appointment of petitioner was made by way of stop gap arrangement on temporary basis for a period of one year, the same shall not create any right to claim seniority or regularisation and that such candidate has to apply for the post as and when such substantive post is advertised. In his submission, the petitioner can hardly be allowed to claim seniority either from the date of first appointment or from the date of second appointment.

31. Having considered the case of the petitioner from all the different angles as canvassed by the learned Counsel for the petitioner, we have no manner of doubt that period from 30th August, 1982 till 15th July, 1983 cannot be counted for the purpose of recognising seniority of the petitioner in the cadre of the Assistant Professor. It is clear from the facts of this case that the appointment of the petitioner to the cadre with effect from 16th July, 1983 being de hors of the statutory rule, the petitioner was entitled to be appointed on probation with effect from 16th July, 1983 though the appointment order was issued showing him as having been appointed on temporary basis. As such, subsequent to the regularisation of the appointment of petitioner, he was only entitled to claim seniority from 16th July, 1983. The seniority was rightly conferred on the petitioner with effect from 16th July, 1983. He was rightly shown junior to the respondent No. 2 since he was placed second to the respondent No. 2 by the selection committee in order of merit.

32. The learned Counsel for the respondents also relied upon some other judgments of the Apex Court dealing with the similar controversy. However, we do not think it necessary to refer to the same in view of the view taken by us for the reasons recorded hereinabove. If the petitioner fails in his first submission to claim seniority with effect from 30th August, 1982 or from 19th March, 1983 then in that event the petitioner cannot challenge promotion of the respondent No. 2 w.e.f. 27-3-1992 to the post of Associate Professor.

33. In the result, the petition is dismissed with no order as to costs.