

(2020) 10 SHI CK 0190

In the High Court Of Himachal Pradesh

Case No : Civil Miscellaneous Petition No. 5772 Of 2020 In Latter Patent Appeals
No. 33, 39 Of 2019

Rajeev Bhardwaj And Others

APPELLANT

Vs

State Of H.P. & Others

RESPONDENT

Date of Decision : 26-10-2020

Acts Referred:

Constitution Of India, 1950 — Article 141, 142, 226
Himachal Pradesh (Appellate Side) Rules, 1997 — Rule 5
Himachal Pradesh Judicial Service Rules, 2004 — Rule 1(2), 3, 3(3), 5, 11, 13, 31
Code Of Civil Procedure, 1908 — Section 11, Order 23 Rule 1, Order 23 Rule 2, Order 23 Rule 2(3)
Himachal Pradesh Judicial Officers (Pay, Allowances And Conditions Of Service) Act, 2003 — Section 3, 4

Citation : (2020) 10 SHI CK 0190

Hon'ble Judges : Anoop Chitkara, J

Bench : Single Bench

Advocate : R.K.Bawa, Ajay Sharma, Shrawan Dogra, Tejasvi Dogra, Ashok Sharma, Ashwani Sharma, Nand Lal Thakur, K.D.Sood, Shalini Thakur, R.L.Sood, Arjun Lall, B.C. Negi, Nitin Thakur

Final Decision : Disposed Of

Judgement

Anoop Chitkara, J

1. After pronouncing dissenting verdicts, Ld. Division Bench could not state the points of difference in terms of clause 26 of Letters Patent, giving a cause to the 5th respondent to come up before this Court under Rule 5 of the Appellate Side Rules for the High Court of Himachal Pradesh read with Clause 26 of Letters Patent Constituting the High Court of Judicature at Lahore, and as made applicable to this Court, seeking to declare the reference to the third Judge as incomplete, and thus, return it for framing a proper reference on the points of difference between the divergent views, and in the alternative refer the matter to Hon'ble Chief Justice to pass necessary orders for constituting a full bench in

terms of Rule 5 of Appellate Side Rules for the High Court of Himachal Pradesh.

2. The main question raised in the writ petitions relates to inter-se seniority dispute amongst three streams of H.P. Higher Judicial Service, i.e.,

(i) The officers promoted on the basis of merit-cum-seniority under 50% quota (Appellant/Petitioner Mr. S.C. Kainthla);

(ii) The officers promoted on the basis of limited departmental competitive examination under 25% quota (Appellant/ Petitioner Mr. Rajeev Bhardwaj); and

(iii) The direct recruits under 25% quota. (Respondents 3 to 6).

3. The Petitioners/Appellants' grievance is that the direct recruits have exceeded their quota, and thus their appointment dehors the H.P. Judicial Service Rules, 2004. Such an appointment would not confer any rights upon the respondents 3 to 6, and they cannot claim their seniority due to the reasons that the appointment itself exceeded their quota prescribed in the mandate of Hon'ble Supreme Court in All India Judges Association v. UOI, (2002) 4 SCC 247.

FACTS:

4. The facts apposite to adjudicate this application, trace its origin to Nov 13, 1991, when Hon'ble Supreme Court referred the matter about pay and conditions of service of Judicial Officers to a Commission. In terms of the resolution dated 21.3.1996, Union of India constituted First National Judicial Pay Commission, headed by Justice K. Jagannatha Shetty, a former Supreme Court Judge. This commission is popularly known as Shetty Commission.

5. In 1999, the H.P. Judicial Officers Association, along with some of its members, including the appellants, filed CWP No. 61/1999, wherein they assailed the seniority of directly recruited Additional District and Sessions Judges.

6. On 11.11.1999, Shetty Commission submitted its report, which led to the pronouncement by Hon'ble Supreme Court in All India Judges Association v. Union of India, (2002) 4 SCC 247, with the following directions:

28. As a result of the aforesaid, to recapitulate, we direct that recruitment to the higher judicial service i.e., the cadre of District Judge will be:

[1](a) 50 per cent by promotion from amongst the Civil Judges (senior division) on the basis of principle of merit-cum-seniority and passing a suitability test;

(b) 25 per cent by promotion strictly on the basis of merit through limited competitive examination of Civil Judges (senior division) having not less than five years qualifying service; and

(c) 25 per cent of the posts shall be filled by direct recruitment from amongst the eligible advocates on the basis of the written and viva voce test conducted by respective High Courts.

[2] Appropriate rules shall be framed as above by the High Courts as early as possible.

29. Experience has shown that there has been a constant discontentment amongst the members of the higher judicial service in regard to their seniority in service. For over three decades, large number of cases have been instituted in order to decide the relative seniority from the officers recruited from the two different sources, namely, promotees and direct recruits. As a result of the decision today, there will, in a way, be three ways of recruitment to higher judicial service. The quota for promotion which we have prescribed is 50 percent by following the principle "merit-cum-seniority" 25 percent strictly on merit by limited departmental competitive examination and 25 per cent by direct recruitment. Experience has also shown that the least amount of litigation in the country, where quota system in recruitment exists, in so far as seniority is concerned, is where a roster system is followed. For example, there is, as per the rules of the Central Government, a 40-point roster which has been prescribed which deals with the quotas for Scheduled Castes and Scheduled Tribes. Hardly, if ever, there has been a litigation amongst the members of the service after their recruitment as per the quotas, the seniority is fixed by the roster points and irrespective of the fact as to when a person is recruited. When roster system is followed, there is no question of any dispute arising. The 40-point roster has been considered and approved by this Court in *R.K. Sabharwal and Ors. v. State of Punjab*. One of the methods of avoiding any litigation and bringing about certainty in this regard is by specifying quotas in relation to posts and not in relation to the vacancies. This is the basic principle on the basis of which the 40-point roster works. We direct the High Courts to suitably amend and promulgate seniority rules on the basis of the roster principle as approved by this Court in *R.K. Sabharwal's case (supra)* as early as possible. We hope that as a result thereof, there would be no further dispute in the fixation of seniority. It is obvious that this system can only apply prospectively except where under the relevant rules seniority is to be determined on the basis of quota and rotational system. The existing relative seniority of the members of the higher judicial service has to be protected but the roster has to be evolved for the future. Appropriate rules and methods will be adopted by the High Courts and approved by the States, wherever necessary by 31st March, 2003."

7. In compliance with the mandate of Hon'ble Supreme Court, the Hon'ble High Court framed H.P. Judicial Service Rules, 2004, which came into effect from 20.3.2004. Rule 5 prescribes the method of recruitment, qualification, and age limit for the aspirants, as drawn from various categories/streams, and reads as follows:

"5. Method of recruitment, qualification and age limit: -

In respect of each category of posts specified in column (2) of the table below, the method of recruitment and minimum qualification, age limit etc. shall be as specified in the corresponding entries in columns (3) and (4) thereof.

Sl. No.

Cadre

Method of recruitment

Qualification, Age limit & experience etc.

1.

District Judge/Addl. District Judge

a) 50% (w.e.f.1.1.2011 65 %) by way of promotion amongst the Civil Judge (Sr. Divn.) on the basis of principle of merit-cum-seniority and passing a suitability test as may be prescribed and conducted by the High Court in accordance with the regulations.

Must have been in the cadre of Civil Judges (Sr. Division) for a period of not less than two years.

b) 25% (w.e.f.1.1.2011 10%) by promotion from amongst Civil Judges (Sr. Divn.) on the basis of merit through limited competition examination as may be prescribed and conducted by the High Court in accordance with the regulations

Minimum service of five years including the service rendered in the cadre of Civil Judges (Junior Division).

c) 25% by direct recruitment from amongst eligible Advocates on the basis of examination written as well as oral (viva voce) test as may be prescribed and conducted by the High Court in accordance with the regulations

The following shall be the eligibility criteria including qualifications, age limit and experience etc.- (i) Citizen of India. (ii) Holder of a degree in Law as recognized by the Bar Council of India. (iii) Practising Advocate at the Bar for a minimum period of seven years as on the last date fixed for receipt of the applications.

Note:

For the purpose of this clause, in computing the period during which a person has been an Advocate there shall be included any period during which he has held a judicial office.

Explanation:-I: Judicial Office includes any other office as may be prescribed being equivalent to a Judicial office by the high Court in regulations made for this purpose.

Explanation II:

Appointments to the cadre of the District Judges from categories (a), (b) and (c) shall be in accordance with a 34 point roster to be maintained by the High Court in this regard.

Note:-1: Reservation in direct recruitment shall be as per Model Roster for cadre strength up to 31 posts.

Note 2: In case the cadre strength is changed, the corresponding changes shall be made in the post-based roster.

Note 3: The appointment already made shall not be affected on account of introduction of new roster.

Explanation-III: The candidates who are employed in any Government department or in any other Organization are required to submit their application(s) through their respective employer(s).

8. At this stage, it is pertinent to mention that Shri S.C. Kainthla belongs to the feeder category of Civil Judge (Senior Division); Mr. Rajeev Bhardwaj belongs to the category of limited competitive examination(s) conducted from amongst the cadre of, Civil Judges (Sr. Division). However, respondents 3 to 6 belong to the category of direct recruits, i.e., from the envisaged stream(s) of eligible Advocates. The grudge of the petitioners/appellants is that instead of following "post-based roster" directed by the Apex Court in the Judges' Association case, respondent No. 2 continued to pursue "vacancy-based roster" up to 31.3.2010.

9. The CWP No. 61/1999 remained pending in this Court till 2005, and disposed of vide order dated 18.4.2005 in the following terms:

"As the hearing was in progress, Mr. Rajiv Sharma, learned Senior counsel appearing for respondent No. 2 submitted that his client has issued communication No. HHC/GAZ/10-17/90-Vol-II-1933-35 dated 28th January, 2005, (which is hereby taken on record by us), whereby a gradation list of the members of H.P. Judicial Service, as it stood on 1.1.2005 was circulated. According to Mr. Rajiv Sharma, the petitioners have not challenged the gradation list circulated along with the aforesaid communication.

Without going into the disputed question whether in the light of various orders passed by this Court in this case from time to time, the petitioners were or were not required to challenge the aforesaid gradation list, we feel that in the facts and circumstances of this case, if the petitioners are afforded an opportunity of filing objections to the aforesaid gradation list and making representation(s) for suitable placement/replacement of the persons covered therein, and if such objections and representations are considered by respondent No. 2, on their merits and in accordance with law, and disposed of within a reasonable time, the interests of all the parties shall be suitably protected. On this suggestion coming from the Court, Mr. Mattewal, learned Senior Counsel appearing for the petitioners submits that the petitioners are in absolute agreement with this suggestion and that they would withdraw this Writ petition with liberty to submit representation(s) and filing objection to the aforesaid gradation list and request the High Court on its administrative side to consider such objections/representations on their merits and in accordance with law and to order re-

location/re-placement of the persons concerned in the aforesaid gradation list. Mr. Anand Sharma, learned counsel appearing for respondent No. 3 and Mr. Shrawan Dogra, learned counsel appearing for respondent No. 4 also have no objection to this course being adopted.

Mr. Rajiv Sharma, submits and undertakes before us that if the petitioners indeed file objections and submit representations against the aforesaid gradation list, the High Court on its administrative side shall consider such objection(s)/representation(s) and dispose them of in accordance with law and on their merits within the shortest possible time, preferably within 2-3 months.

Based on the aforesaid agreement between the parties, the Writ petition is disposed of as settled. We pass the following order and issue hereinbelow mentioned directions:-

Only in so far as the placement of direct recruited Additional District Judges in the aforesaid gradation list is concerned (and for no other reason or ground), it shall be open to petitioner No. 1 as well as other aggrieved Officers, if any, to file objections or make representations against their alleged improper placement and for seeking rectification/redressal of grievances. Such objections shall be filed and such representations shall be made, if any, latest by 30th April, 2005.

The High Court on its administrative side shall receive the aforesaid objections/representations, process the same, examine and consider them on their merits and dispose them of in accordance with law.

If in the process of consideration, the High Court feels that anyone whose name has been included in the aforesaid gradation list needs to be displaced to a lower position, an opportunity of being heard shall be afforded to such person but only through the mechanism of a written representation. No such person shall have any right of a personal hearing.

The High Court on its administrative side shall take a final decision in the aforesaid matter on its merits and in accordance with law as expeditiously as possible and in any case by 31st July, 2005.

If anyone feels aggrieved by the decision of the High Court, it shall be open to such person to approach this Court again on the judicial side.

In view of the aforesaid order, no earlier representation filed on the subject by any one shall be entertained. All such earlier representations shall be consigned to records without taking any action thereupon.

Since this Writ petition is being disposed of as settled in the light of the aforesaid agreement between the parties, we wish to clearly place on record that we have not gone into any question relating to the merits of the controversy between the parties nor have expressed any opinion with regard thereto. All questions and issues are left open.

The writ petition is disposed of. All interim orders shall stand vacated."

10. In terms of the directions mentioned above, the H.P. Judicial Officers Association and various other Judicial Officers of the H.P. Higher Judicial Service and H.P. Judicial Service filed representation, which were referred to Two Judge Committee. The said Committee made recommendations for rejecting all the representations. The matter was accordingly placed before the Full Court and vide its meeting held on 22.8.2005, the Full Court accepted the recommendations of the Committee and resultantly, all the representations including the one raised by the H.P. Judicial Officers Association filed on its behalf, and also of its members were also rejected, and informed the representationists about rejection vide letter dated 24.8.2005.

11. The petitioners had also filed two interim applications registered as IA Nos. 234 & 235 of 2009 for seeking interim directions in WP (C) No. 1022 of 1989.

12. However, both applications came to be rejected by the Hon'ble Supreme Court vide its order dated 26.03.2009, which reads thus: -

"In both these applications, the Association of Judicial Officers pray that there should be a roster system in the matter of seniority if there is any violation of the roster system, the applicant would be at liberty to take any appropriate steps. We do not wish to interfere with the applications. I.A.s are disposed of accordingly."

13. In March 2009, H.P. Judicial Officers' Association along with a few of its members filed W.P. (C) No. 532 of 2009 in the Supreme Court of India for the following reliefs:

"(i) that the roster system as approved in R.K. Sabharwal's case 1995(2) SCC 745 is applicable to the appointments being made in the cadre of District Judges that the direct recruits be held to have only 8 posts in the cadre of 34 posts in view of their 25% quota, whereas the direct recruits at present are holding 11 posts beyond their quota;

(ii) that the further direct recruitment be held only when the number of direct recruits is reduced to 8 from the present 11 in the cadre of 34 posts and till then direct recruitment may very kindly be ordered to be stopped;

(iii) that any action taken by the respondents during the pendency of this writ petition viz. making appointments of direct recruits pursuant to advertisement Annexure-D, issuing gradation lists etc. shall be subject to the orders that may be passed by this Hon'ble Court;

(iv) quash the advertisement Annexure -D advertising three vacancies for the direct recruits, who are already occupying 3 excess posts in the cadre of District Judges."

14. On 4.9.2009, H.P. Judicial Officers Association passed a resolution seeking enforcement of post-based roster, following the directions of Hon'ble Supreme Court, delivered in All India Judges Association v. UOI, (2002) 4 SCC 247.

15. On 4.12.2009, the petitioners withdrew the writ petition WP (C) No. 532 of 2009, and Hon'ble Supreme Court passed the following order:

Learned counsel for the petitioner seeks permission to withdraw the petition with liberty to move the High Court. Permission Granted. Writ petition is dismissed as withdrawn.

16. After that the petitioners moved the Administrative Side of High Court by filing a representation. In 2010, Hon'ble High Court, the 2nd respondent, constituted a committee of its three Hon'ble Judges to examine the representation. On 30.3.2010, the committee submitted its report doubting the vacancy-based roster's correctness, that the 2nd respondent had been following. The appellants' grievance is that although the Hon'ble High Court of Himachal Pradesh corrected its mistake, and w.e.f. 30.3.2010, applied the post-based quota but did not push down the respondents 3 to 6 in the seniority list.

17. On 8.3.2010, the H.P. Judicial Officers Association consisting of the officers belonging to the cadre of Civil Judges (Senior and Junior Division), filed a writ petition in this Court (CWP No. 696/2010), seeking a stay on the new appointments of Direct recruits above their quota, praying therein the following relief:

"(i) that the roster system as approved in R.K. Sabharwal's case 1995(2) SCC 745 is applicable to the appointments being made in the cadre of District Judges and the direct recruits be held to have only 8 posts in the cadre of 34 posts in view of their 25% quota, whereas the direct recruits at present are holding 11 posts beyond their quota;

(ii) that the further direct recruitment be held only when the number of direct recruits is reduced below 8 from the present 11 in the cadre of 34 posts and till then, the direct recruitment may very kindly be ordered to be stopped;

(iii) that any action taken by the respondents during the pendency of this writ petition viz. making appointments of direct recruits pursuant to advertisement Annexure P-4 and any other advertisement which may be issued in future, issuing gradation lists, confirming direct recruits appointed in excess of their quota etc. shall be subject to the orders that may be passed in this petition by this Hon'ble Court;

(iv) quash the advertisement Annexure P0-4 advertising three vacancies for the direct recruits, who are already occupying 3 excess posts in the cadre of District Judges, beyond their quota of 8 posts;

(v) Restrain the respondents no. 1 to 3 from initiating any process this year from making any further direct recruitment in excess of their quota of 25%;

(vi) direct the respondents no. 1 to 3 to follow the roster system of R.K. Sabharwal's case, 1995(2) SCC 745 as approved by the Hon'ble Supreme Court in All India Judge's Association Case, (2002) 4 SCC 247 and as contained in

Rules 5 & 13 of the new Rules of 2004 Annexure P-2 (colly) while making the direct recruitment."

18. Vide order dated 20.4.2010, passed in All India Judges Association v. UOI, (2010) 15 SCC 170, Hon'ble Supreme Court reduced the quota of limited competitive examination from 25% to 10%, simultaneously increasing the quota by Promotion from 50% to 65%, w.e.f. 1.1.2011.

19. On 15.12.2014, Appellants, along with two other officers, filed an IA no. 334 of 2014, in the Hon'ble Supreme Court seeking implementation of its judgment reported in (2002) 4 SCC 247.

20. On 28.4.2016, Hon'ble Supreme Court passed the following directions, in I.A. No. 334/2014,

"In this application, the applicant has come forward with two distinct prayers. The first prayer is for a direction to the respondents to create cadres of Civil Judge (Junior Division) and Civil Judge (Senior Division) with effect from 1.7.1996. It is pointed out to us that the Himachal Pradesh Judicial Officers (Pay, Allowances and Conditions of Service) Act, 2003 (hereinafter referred to as 'the Act of 2003') and Himachal Pradesh Judicial Service Rules, 2004 (hereinafter referred to as 'the Rules of 2004') have already come into force. Section 1(3) of the Act of 2003 states that the Act should be deemed to have come into force on 1 st day of July, 1996. Section 3 of the Act of 2003 reads as under: -

"3. Salaries.-Notwithstanding anything contained in any rules made under any other law for the time being in force, regulating the pay, allowances and other conditions of service, or any order or judgment passed by any Court, the Judicial Officers in the State shall be paid the pay scales as specified in the Schedule and the rates of allowances and other conditions of service of such Officers shall be such as may be prescribed."

Section 4 of the Act of 2003 further provides, as under: - "4. (1) Subject to the provisions of section 3, the State Government may by notification in the official Gazette, make rule with retrospective effect regulating the pay, allowances and conditions of service of the Judicial Officers."

The cadre of Civil Judge (Senior Division) was constituted from 20th March, 2004. As per Rule 3 of the Rules of 2004 the following categorization in the cadre of Civil Judge (Senior Division) and Civil Judge (Junior Division) has been formulated. However, sub-Rule (2) of Rule 1 of the Rules of 2004 states that the Rules shall come into force from the date of publication in the Official Gazette and the Gazette Publication was on 20th March, 2004. In the light of the said prescription made in the Rules after the categorization was made under Rule 3(3), the grievance of the applicant has now surfaced. The grievance of the applicant, as rightly pointed out by Mr. Patil, learned senior counsel, based on their prescription contained in Section 3 of the Act of 2003 read along with Section 4, even if the categorization came to be made under the Rules of 2004,

the same should have been given effect to retrospectively, in consonance with the specific provisions contained in the above referred Sections 3 and 4 of the Act of 2003. We are fully convinced of the said submission so made by the learned senior counsel on behalf of the applicant(s).

In such circumstances, the prescription under sub-Rule (2) of Rule 1 of the Rules of 2004 and the Gazette Publication dated 20.3.2004 cannot supersede the specific provision contained in Sections 3 and 4 of the Act of 2003, more so, when the Act of 2003 was deemed to have come into force with effect from 1st day of July, 1996.

In this context, it will be absolutely necessary to note what this Court has directed in paragraph 38 of the judgment rendered in All India Judges' Association and Others v. Union of India and Others reported in (2002) 4 SCC 247. the said paragraph reads as under: -

"38. We are aware that it will become necessary for service and other rules to be amended so as to implement this judgment. Firstly, with regard to the pay scales, the Shetty Commission has approved the pay scales with effect from 1-1-1996 but has directed the same to be paid with effect from 1-7-1996. However, it will take some time for the States to make necessary financial arrangements for the implementation of the revised pay scales as approved by this Court with effect from 1-7-1996. The arrears of salary between 1-7-1996 to 30-6-2002, will either be paid in cash or the States may make the payment by crediting the same in the provident fund account of the respective judicial officers. Furthermore, the payment by creditor otherwise should be spread over between the years 1-7-1996 to 30-6-2002 so as to minimize the income tax liability which may be payable thereon. In calculating the arrears, the Government will, of course, take into account the interim relief which had been granted and drawn by the judicial officers. The amount to be credited in the provident fund account would also be after deducting the income tax payable."

Therefore, even applying the same the applicant is entitled for the direction asked for.

In the said circumstances, the first prayer of the petitioner merits acceptance and the same is granted and the respondents are directed to create cadre of Civil Judge (Junior Division and Civil Judge (Senior Division), as prescribed under the Rules of 2004, and give effect to the same on and from 1.7.1996 with all consequential benefits accrued to those officers who hold the respective cadre post as from that day.

The second prayer of the petitioner is for direction to the respondents to follow "post based roster" in appointments to the cadre of District Judges with effect from 31.3.2003. The said prayer is again based on the statement of law as propounded in paragraph 49 of the above referred to decision rendered in all India Judges' Association and Others (supra). While stating as to in what manner the 40-point roster is to be determined, this Court directed that appropriate

Rules and methods should be adopted by the High Courts and approved by the States wherever necessary by 31.3.2003. When this application was moved, initially on behalf of the High Court, learned Standing Counsel took notice and submitted that in the High Court a Committee has been constituted which is deliberating on this issue, and, therefore, he will be able to report to this Court in a week's time. It is now pointed out by Mr. Patil, learned senior counsel for the applicant(s) that the 34-point roster has been drawn by the High Court based on the cadre strength providing for different points applicable to the promotees by way of limited competitive examination as well as for direct recruits in the entry level District/Additional District and Sessions Judge. It is also brought to our notice that appropriate Rules have also been drawn by the High Court which has been notified by the State Government on 16th March, 2004. The Rules have been captioned as "Himachal Pradesh Judicial Service Rules, 2004". Rule 13, which specifies as to how seniority list is to be worked out is to the following effect: -

"RULE-13

Seniority-(1) Where Officers are recruited to a cadre by promotion and direct recruitment seniority shall be regulated by the roster maintained for such recruitment. Officer appointed against higher point of roster shall rank senior to the Officers appointed against a lower point:

Provided that no person appointed to a cadre by direct recruitment shall, for the purpose of fixation of his seniority claim any particular place in seniority unconnected with the date of his actual appointment.

(2) Where more than one Officers are promoted to cadre at the same time inter-se seniority of persons so promoted shall be determined by their inter-se seniority in the lower cadre.

(3) Where direct recruitment is made to a cadre, the inter-se seniority of person so recruited shall be in the order in which their names are arranged in the select list.

(4) Every year in the month of January seniority list of Officers in all cadres, shall be prepared and published by the High Court and the lists so published shall be issued for the purpose of making promotions to the next higher cadres."

As far as the method of recruitment for the purpose of Entry Level District Judge is concerned, Explanation II, reads as under: -

"Appointment to the cadre of the District Judges from categories (a), (b) and (c) shall be in accordance with 40-point roster to be maintained by the High Court in this behalf."

Inasmuch as, 34-point roster having been drawn by the High Court and the relevant rules relating to seniority, namely, Rule-13 has also come into effect, the only other question to be decided is as to how it should be implemented as from

31.3.2003, as directed by us in the judgment referred to above. While drawing the 34-point roster, the High Court has mentioned that the same would be followed after 31.3.2010.

Having regard to the specific direction of this Court in the judgment referred to above in paragraph 23, we are of the view that it is required to ascertain as to how the 34-point roster for the three different channels are to be worked out. The High Court is, therefore, directed to apply Rule-13 which prescribes as to how seniority to be drawn by applying the said Rules, ascertain the roster point for the three different categories of promotees and direct recruits and carry out the said exercise from 31.3.2003.

We, however, direct the High Court to place the said report after carrying out the said exercise, to pass further orders. We only direct the High Court to carry out the said exercise within a period of two months.

List on 14.7.2016.

We make it clear and reiterate that we only want the outcome of such exercise to be placed before this Court before passing further orders as to its implementation."

21. On 14.7.2016, Hon'ble Supreme Court passed the following order:

"Since, it is reported that identical prayer is subject matter of consideration in Civil Writ Petition No. 696 of 2010 titled H.P. Judicial Service Officers Association v. State of Himachal Pradesh and others, before the High Court of Himachal Pradesh, we are of the view that the parties should be relegated to work out their remedy in the said writ petition and await the outcome of the said writ petition. Adjourned.

The applicant is permitted to move the High Court for expeditious hearing of the writ petition."

22. On 4.11.2016, the association withdrew the CWP No. 696/2010, which was pending in the High Court of Himachal Pradesh, without seeking any liberty to re-agitate the matter.

23. On 25.4.2017, Hon'ble Supreme Court issued further directions, in I.A. No. 334/2014, which read as follows:

"Having heard learned counsel for the parties, we request the High Court to submit the report through the counsel by second week of July, 2017. Needless to emphasis, the report of the Committee shall be in consonance with the principal judgments i.e. All India Judges' Association and others vs. Union of India and Others (2002) 4 SCC 247 and All India Judges' Association and Others vs. Union of India and Others (2010) 15 SCC 170. We are sure that the High Court shall analyze the judgments and submit the report which will be in accord with both the judgments. When we say in accord with the judgments, the High Court will appreciate both the verdicts in letter and spirit."

24. After that, Hon'ble High Court constituted a committee of two Judges. In Sep 2017, the Judges Committee of the High Court of Himachal Pradesh submitted its report. On 21.9.2017, Hon'ble High Court of Himachal Pradesh, in its Full Court meeting, approved the Judge's Committee report.

25. On 9.10.2017, Hon'ble Supreme Court passed the following order in I.A.No. 334/2014,

"It is submitted by Mr. P.S. Patwalia, learned senior counsel for the respondent that he would like to file an application on behalf of the direct recruits whose seniority position is affected. As this juncture, Mr. Dushyant Dave and Mr. Basava Prabhu S. Patil, learned senior counsel appearing for the applicant-promotees submit that the view taken by the High Court is in consonance with the decision in All India Judges' Association and ors. vs. Union of India and others (2002) 4 SCC 247 and (2010) 15 SCC 170.

Mr. Raju Ramachandran, learned senior counsel appearing for the High Court shall file a comprehensive affidavit with regard to the decision taken by the High Court, and also indicate whether the decision taken by the High Court is in consonance with the judgment rendered by this Court in All India Judges' Association's case (supra).

As we understand, the issue is whether the seniority position, as claimed by the parties, has been fully covered by the earlier decision rendered by this Court and anything else remains to be done. Additionally, it will be open to the parties to assist us if there is any order passed by this Court in connection with this case or any other case.

Let the matter be listed on 6.11.2017 at 2.00 P.M.

A copy of the report submitted by the High Court to the Registry of this Court be handed over to the learned counsel for the parties."

26. After that, the present respondents 3 to 6 filed application in Hon'ble Supreme Court to be impleaded as a party. On 8.11.2017, Hon'ble Supreme Court allowed the said application.

27. Vide order dated 13.3.2018, Hon'ble Supreme Court closed I.A. No. 334/2014, by holding as follows:

"The issue raised in I.A. No. 334 of 2014 in Writ Petition (Civil) No. 1022/1989, as it appears to us from the materials on record, relates to the disputes inter se between the individuals/groups, which , in our considered view, would not be appropriate for determination by this Court in an I.A. (No.334 of 2014) filed in W.P.(C) No. 1022/1989 (All India Judges Association & Ors. Vs. Union of India & Ors.). We, therefore, decline to entertain the I.A. any further leaving the parties to have resort to such remedies as may be available to them in law."

28. On the strength of the liberty granted by Hon'ble Supreme Court, the petitioners/appellants filed separate writ petitions in the Court, dated 4.9.2018

and

22.9.2018 respectively, seeking identical relief, which reads as follows:

(i) create the cadre of Civil Judge Senior Division w.e.f.1.7.1996 in accordance with the directions of the Hon'ble Supreme Court of India in All India Judges' Association and others vs. Union of India and others (2002) 4 SCC 247 and I.A. No.334 of 2014 in Writ Petition (Civil) dated 28.4.2016 and to grant consequential benefits to the petitioner.

(ii) follow the post-based roster w.e.f. 31.3.2003 by following the report of the Hon'ble Judges Committees and declare the petitioner senior to respondents No.3&4 and to grant all consequential benefits to the petitioner, including considering him for elevation as Judge of High Court by placing relevant material before the competent authority.

(iii) quash the seniority/gradation lists circulated w.e.f. 1.1.2005 onwards particularly gradation list Annexure P-16 circulated on 18.1.2018 showing petitioner junior to respondents No. 3 and 4, as being contrary to the directions of the Hon'ble Supreme Court of India in All India Judges Association Case (supra) and H.P. Judicial Services Rules, 2004.

(iv) issue any other appropriate writ, order or direction which this Hon'ble Court may deem just and proper in the nature and circumstances of the case.

29. Vide judgment dated 1.5.2019, learned Single Bench, dismissed both petitions, the relevant portions of the judgment read as follows:

(33). In the sequence of events, as narrated above, it is clearly established on record that at the time when the petitioners sought to agitate the matter, it was only a stale or dead issue and it was more than settled that the issue of limitation or delay and laches has been considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. Neither a court's direction to consider a representation issued without examining the merits, nor a decision given in compliance with such direction, will extend the limitation, or erase the delay and laches.

(34). The petitioners are guilty since they have acquiesced in accepting the appointment of the private respondents from the date and day they came to be appointed and did not challenge the same in time. If they would have been vigilant enough, they could have filed writ petitions. The petitioners lost time or whiled it away and did not rise to the occasion in time for filing the writ petitions. Secondly, because of acquiescence and waiver on the part of the petitioners, no relief can be granted to them as this would prejudicially affect rights of the private respondents.

(35). In such circumstances, there is no question why the Court should come to the rescue of such persons, when they themselves are guilty of acquiescence and

waiver.

(57). This Court sees no reason to interfere with stale or dead claim presented in these writ petitions relating to seniority at this distance of time in view of the observations made in P.S. Sadasivaswamy's case, wherein the Hon'ble Supreme Court has guided that the matter of promotion and seniority should be agitated without delay and at least within six months or one year from the date of accrual of cause of action. The approach of the petitioners is found inordinately belated.

(58). Thus, it would be prudent for this Court not to interfere and create multiple complications of seniority etc. and upset the settled rights of others in the cadre. The petitions as against the rights of the private respondents suffers from inordinate delay and un-explained laches.

(59). This however not to suggest that law declared by the Hon'ble Supreme Court is not binding on this Court, but the manner in which the petitioners are now seeking its implementation/enforcement cannot be countenanced and the same now has to be enforced without disturbing seniority position of the direct recruits.

(72). The cause of action, if any, arose to the petitioners on the dates when respondents No. 3 and 4 came to be appointed i.e. on 18.5.2004 and 7.12.2006 and having failed to assail their appointments and assignment of the seniority within time frame as provided by the Hon'ble Supreme Court in P.S. Sadasivaswamy's case, they are not entitled to any relief(s) as claimed.

(73). Since the writ petitions are being disposed of on the ground of delay and laches, acquiescence and also the clubbing of various causes of action, other preliminary objections raised by respondents N. 3 to 6 and merits of the case need not to be gone into.

30. Challenging the writ petitions' dismissal, the appellants came up before this Court by filing Intra Court appeals under clause 10 of the Letters Patent of the Lahore High Court as applicable to the High Court of Himachal Pradesh. Vide judgments dated 11.03.2020, Hon'ble Justice Dharam Chand Chaudhary dismissed the LPAs, whereas, Hon'ble Mr. Justice Sureshwar Thakur allowed the same. Consequently, Ld. Division Bench directed that the matter be put up before Hon'ble Chief Justice given the dissenting judgment. After that, Hon'ble Chief Justice assigned the case to this Court.

31. Shri Chirag Bhanu Singh, the 5th respondent, has filed this CMP (5772 of 2020), stating that given clause 26 of the Letters Patent, Ld. Judges were supposed to state the point upon which they differ, and after that, the case shall then be heard on that point by one or more of the other Judges, and the point shall be decided according to the opinion of the majority of the Judges who have heard the case, including those who first heard it. The Applicant seeks declaration that the reference to the third Judge was incomplete in the absence of stating the points of difference.

The Applicant wants this Court to return the reference for framing a proper reference on the points of difference between the divergent views, and in the alternative refer the matter to Hon'ble Chief Justice to pass necessary orders in terms of Rule 5 of Appellate Side Rules for the High Court of Himachal Pradesh for constituting a full bench to hear the matter.

32. I have heard the parties and have gone through the record.

EXTENT TO WHICH ARGUMENTS WERE HEARD IN CWP & LPA:

33. Mr. Rakeshwar Lal Sood, Ld. Sr. Advocate representing respondents 3 to 5, stated that while hearing Writ petitions and LPAs, the arguments were confined to preliminary submissions, and no arguments were addressed or heard on merits. Ld. Sr. Advocate, further stated that in the judgment authored by Hon'ble Mr. Justice Sureshwar Thakur, there is no such statement that apart from the preliminary issues; arguments were also heard on merits. He submits that as far as the merits of the case are concerned, no question arises for points of difference because the judgment authored by Hon'ble Mr. Justice Dharam Chand Chaudhary did not dwell on the merits. He further contends that as far as findings of Hon'ble Mr. Justice Sureshwar Thakur on merits are concerned, the said part of the judgment is a nullity.

34. Mr. Kapil Dev Sood, Ld. Sr. Advocate, duly assisted by Ms. Shalini Thakur Advocate, representing High Court, stated at the bar that in LPA, the parties did not lead any arguments on merits and confined it to delay and laches and other preliminary submissions. He further contends that the arguments on the merits of the writ petition and the questions involved therein on the merits of the case, were not urged on behalf of the respondents, as only on the preliminary objections were heard at that stage.

35. Mr. Raman Kumar Bawa, Ld. Sr. Advocate, representing petitioner/appellant Shri Rajiv Bhardwaj, contended that facts are so intermixed that arguments addressed on the preliminary issues also cover all the points, and nothing survived to be discussed on merits. He argued that Hon'ble High Court should have applied the principle of pushed down and redrawn the seniority list in the light of the directions of Hon'ble Supreme Court in All India Judges' Association and Others v. Union of India and others, (2002) 4 SCC 247, and because Hon'ble High Court failed to implement the mandatory directions, the appellants approached this Court for implementation of the judgment.

36. Mr. Shrawan Dogra, Ld. Senior Advocate representing the petitioner/appellant Mr. S.C Kainthla, contended that this Court must consider the entire matter on its merits because the foundational facts which intermingled with the preliminary facts are the implementation of the directions of Hon'ble Supreme Court passed in All India Judges' Association and Others v. Union of India and Others reported in (2002) 4 SCC 247. Ld. Counsel states that since none can interpret or undermine the highest Court's mandate, on the face of law declared by it, the said directions constitute the foundational facts. Therefore, there is

nothing else that can be heard on merits. Mr. Shrawan Dogra further contends that delay and latches cannot form any riders for implementing the directions given by the highest Court of the land.

37. The Writ petitions were listed for final hearing before learned Single Judge. A reference to order dated 28.2.2019 is required, and it reads as follows,

"Arguments of the respondents on preliminary submissions/objections concluded. List for rebuttal arguments of the petitioner(s) on 01.03.2019."

Order dated 05.03.2019 reads as follows,

Arguments on behalf of petitioner on preliminary submissions in CWP no. 2061 of 2018 concluded. Now to come up for arguments on behalf of petitioner in CWP no. 2292 of 2018, on preliminary submissions as also rebuttal arguments, on 07.03.2019."

Order dated 12.3.2019 reads as follows,

"The petitioners have concluded their arguments. Now to come up for rebuttal arguments on preliminary objections of the respondents on 15.3.2019."

Order dated 18.3.2019, vide which the judgment reserved reads as follows,

"Arguments heard. Judgment reserved on preliminary objections raised by the respondents regarding the maintainability of both these petitions."

38. Vide judgment dated 1.5.2019, learned Single Bench dismissed both petitions, the relevant portions of the judgment read as follows:

(3). Before arguments on the merits of the case could be heard, the learned counsel for the respondents questioned the very maintainability of these petitions by raising various preliminary objections like delay and latches, the petition being barred by provisions contained in Order 23 Rule 1, Order 2 Rule 2 (3) and Section 11 CPC and the petitioners being guilty of suppressio veri and suggestio falsi etc.

39. Regarding the extent of arguments covering which issues, Hon'ble Mr. Justice Dharam Chand Chaudhary clarified in the judgment in the following terms,

(8). As pointed out at the very outset, since both the writ petitions have been dismissed on the grounds of delay and laches, acquiescences and also bad on account of clubbing of various causes of action, therefore, the arguments heard only qua this part of the case as learned Single Judge has not touched the merits of the case and in case the findings recorded by learned Single Judge are not ultimately found to be legally and factually sustainable on analyzing the arguments to be addressed by the parties on both sides, we may proceed further to hear this matter on merits also because the Apex Court in *Roma Sonkar vs. Madhya Pradesh State Public Service Commission & anr.*, Civil Appeal Nos. 7400-7401/2018, decided on 31.7.2018 has deprecated the practice of remanding of case to Single Judge while holding that the Single Judge is not

subordinate to the Division Bench. Also that the Division Bench in Letters Patent Appeal if sets aside the judgment of the Single Judge should not remand the same to learned Single Judge and rather decide on merits itself. Mr. R.L. Sood, learned Sr. Advocate has, however, addressed the arguments in support of the remaining undecided preliminary objections also as permission to do so was granted by vide order dated 9.8.2019 passed in CMP No. 7630 of 2019 and CMP No. 7632 of 2019 filed in these appeals.

ARGUMENTS ON CLAUSE 26 OF LETTERS PATENT:

40. Mr. R.L.Sood, Sr. Advocate contends that this Court cannot travel beyond the scope of clause 26 of the Letters Patent, wherein it was for the Division Bench, after dissent to state the points of difference. He further contends that clause 26 of Letters Patent does not empower the third judge, sitting in a single bench to cull out the points of difference and proceed to decide the reference. Such an act would read more than a statute provides and would amount to legislating, which this Court would always refrain from venturing into. He further contends that in the absence of any ambiguity in clause 26, the division bench's deficiency cannot be filled up by a single bench.

41. Mr. Kapil Dev Sood, Sr. Advocate representing Hon'ble High Court, most humbly contends that there is no adjudication on merits of the cases either by the Hon'ble Single Judge or by the two Hon'ble Judges constituted to hear the Letters Patent Appeal and finding on merits by allowing the writ petition by Hon'ble Mr. Justice Sureshwar Thakur is neither the opinion of two Judges nor can amount to a difference of opinion in the judgment, and those points require to be adjudicated first before the matter is taken up for consideration on other aspects.

42. Mr. R.K.Bawa, Sr. Advocates representing the Appellants/Non-Applicants contends that this Court is competent to cull out the points of difference to comply with the directions issued under Article 141 & 142 of the Constitution of India, in *All India Judges' Association and Others v. Union of India and Others*, reported in (2002) 4 SCC 247. He further contends that the fault and the delay were at the end of the Hon'ble High Court.

43. Mr. Shrawan Dogra, Sr. Advocate, supports the arguments of Mr. Bawa and further contends that this Court has two roles to play; the first role would be when the points of difference are not framed, and then it is incumbent upon the third Judge to cull out the points of difference. He further states that the dual role given by circumstances, assumes by doing the limited duty to cull out the points of difference by merely reading both the judgments. Secondly, given the highest Court's directions, this Court must not enter into technicalities, and must proceed to cull out the points of difference and hear the entire matter. He further contends that in this flux, the Appellants, who are at the losing wickets, cannot be faulted for the factors due to which the Division Bench could not state the points of difference. Their agony should not be prolonged, which would send an

incredibly wrong message.

44. Mr. R.K.Bawa as well as Mr. Shrawan Dogra, learned Senior Advocates have a common cause and thus, supported each other by asserting that the decision of Hon'ble Supreme Court in All India Judges' Association and Others v. Union of India and Others reported in (2002) 4 SCC 247, has created indefeasible rights in favor of the Appellants. Neither delay nor anything else can be a ground for disobedience of such directions. On failure of the Hon'ble High Court to follow proper procedures and comply with the Hon'ble Supreme Court's orders, they had no other choice except by invoking Article 226 of the Constitution of India. Both contended that it is only the petitioners whose loss will be irreversible, and a lot of time is also wasted because of the COVID-19 pandemic leading to Lockdown, consequent restrictions, and in the beginning, lack of adaptability to conduct cases through video conference. They contend that the Court should not enter into technicalities and Justice be done in the spirit of the law.

ANALYSIS AND CONCLUSION:

45. Clause 26 of Letters Patent constituting the High Court of Judicature at Lahore, dated 21st March, 1919, reads as follows,

26. Single Judges and Division Courts.- And we do hereby declare that any function which is hereby directed to be performed by the High Court of Judicature at Lahore, in the exercise of its original or appellate jurisdiction, may be performed by any Judge, or by any Division Court, thereof, appointed or constituted for such purpose in pursuance of section one hundred and eight of the Government of India Act, 1915; and if such Division Court is composed of two or more Judges and the Judges are divided in opinion as to the decision to be given on any point, such point shall be decided according to the opinion of the majority of the Judges, if there be a majority, but, if the Judges are equally divided, they shall state the point upon which they differ and the case shall then be heard upon that point by one or more of the other Judges and the point shall be decided according to the opinion of the majority of the Judges who have heard the case, including those who first heard it.

46. The Division Bench of this Court heard this matter on Letters Patent Appeals filed under clause 10 of the Letters Patent, against the decision of Ld. Single Judge. Given the dissenting judgments of both Hon'ble Judges, clause 26 defines the scope for the third Judge. However, since the third Judge is to hear the case upon the point(s) of difference the judges so stated when equally divided, while pronouncing their verdicts. Although clause 26 uses the word "shall" while contemplating such equal division, and mentions that "if the Judges are equally divided, they shall state the point upon which they differ," however, may be because the date of the pronouncement of judgment co-incidentally was the last working day of one of the Hon'ble Judges, as such, they probably did not get time to frame the points of difference.

JUDICIAL PRECEDENTS:

47. Relevant excerpts of the judicial precedents are being extracted to find out whether any of the decision deals with the present situation or otherwise applies to the facts and circumstances or not.

48. In *Mussammat Sardar Bibi v. Haq Nawaz Khan & another*, AIR 1934 Lahore 371, at page 379, the full bench of Lahore High Court observed,

In the case before us the points of difference between the learned Judges of the Division Bench have not been stated expressly and to this extent the reference is defective. These points are however apparent from their respective judgments, and counsel for both sides agreed before us that it was unnecessary to remit the case to the Division Bench to have the question formally drawn up. Accordingly at the commencement of the hearing, the points requiring decision by the Bench were formulated by us, with the concurrence of both parties, as follows:

49. In *Firm Ladhuram Rameshwardayal v. Krishi Upaj Mandi Samiti, Shivpuri*, AIR 1978 MP 10, full bench of Madhya Pradesh High Court observed as follows,

[2] It is thus that the matter has come before us and the two questions which we have to answer are these: --

"(1) When on account of difference of opinion between two Judges constituting a Division Bench, a matter is referred to, under Rule 11 of Chapter I of the High Court Rules, a third Judge nominated by the Chief Justice under Clause 26 of the Letters Patent who, after formulating the point or points of difference between the Judges of the Division Bench, gives his decision, then can any other Division Bench of which one or both the Judges were not members of the Division Bench which originally heard the case, give its decision in accordance with the majority of the opinion of the Judges of the referring Bench as well as of the referee Bench?

(2) When on a difference of opinion between the two Judges constituting the Division Bench, the matter is referred to a third Judge and the third Judge while expressing his opinion on the point of difference passed a final order, disposing of the matter referred to him and does not return the matter to the Division Bench, can the matter be said to be pending and can the Chief Justice suo motu order for its being listed before the referring Division Bench or to some other Division Bench for disposal according to the method provided by Clause 26 of the Letters Patent?

[20] In the result, we answer the two questions referred to us as follows:--

(1) When on account of difference of opinion between two Judges constituting a Division Bench, a matter is referred to a third Judge nominated by the Chief Justice under Rule 11 of Chapter I of the High Court Rules, and the third Judge, after formulating the point or points of difference of the Judges of the Division Bench, returns his opinion under Clause 26 of the Letters Patent, any other Division Bench of which one or both of the Judges were not members of the Division Bench which originally heard the case, can render the decision in

accordance with the majority of the opinion of the Judges of the referring Bench and the referee Bench.

(2) When on a difference of opinion between two Judges constituting a Division Bench, a matter is referred to a third Judge, the third Judge can, only express his 'opinion.' on the 'point' on which the Judges are divided in opinion. However, the third Judge cannot 'decide' that point. (He has to leave to the Division Bench to 'decide' the point as directed under Clause 26 of the Letters Patent). Nor can he enter into any other point on which the Judges of the Division Bench were not divided in opinion. If the third Judge expresses his opinion on any other point or finally decides the case as a whole, the latter part of his opinion (be it styled as 'order' or 'judgment') has to be ignored as without jurisdiction. After the third Judge has recorded his opinion; the case must be laid before the Division Bench for deciding the point or points which were referred to the third Judge according to the method provided by Clause 26 of the Letters Patent and it is at this stage that a Division Bench will finally decide the case before it. It is not the requirement of law that the case must be laid before the same Division Bench which first heard it, after it is returned by the third Judge. When one of the Judges constituting the Division Bench which first heard the case, has retired or is not otherwise available, the Chief Justice can constitute another Division Bench to decide the case according to the method provided by Clause 26 of the Letters Patent.

50. In *Amar Pal Singh v. Election Commission of India*, AIR 1993 Del 316, Ld. Single Bench of Delhi High Court observed,

[12] In this case the Judges were equally divided. They should have specifically stated the point upon which they had differed and the case could be heard on that point only by another Judge. It is obvious that hearing by another Judge is confined to the specific points stated and cannot cover the whole case again. But the order of reference in this case states that the papers may be laid before Hon'ble the Chief Justice and he may designate a third Judge to hear the matter. The learned Judges ought to have stated explicitly as to what was to be decided by a third Judge. The expression 'matter' used in the reference has not been clarified as to the points to be decided by the third Judge; especially in the facts and circumstances of this case and in view of the stand taken by Mr. Bansal. In the absence of the clarification it is not possible to answer the reference.

[13] In view of my above reasoning, this Bench must return the reference unanswered and without any finding. The papers may be laid before Hon'ble the Chief Justice for appropriate orders.

51. In *Parmanad Agarwal & ors v. Sudera Enterprises (P) Ltd*, 1999 SCC Online Cal 614, Ld. Single bench of Calcutta High Court observed,

Although the question of law upon which the learned Judges differed in their opinion could be deciphered from the orders passed by them but keeping in view the aforementioned submissions made at the Bar, this court is of this opinion that

it is not possible for this court to formulate the points of difference in the light of a decision of the special bench of this court in *Jyoti Prakash Mishra (Supra)* [AIR 1965 Calcutta 483].

52. In *Neeraj Sharma v. Union of India*, Punjab Law Reporter, Vol CXLIV- (2006-3), at page 8, Para 23, Ld. Single B Judge observed,

Conclusions: For the reasons recorded above, since no point of difference seems to emerge, from the two points agitated on behalf of the applicants, on which separate deliberations have been recorded hereinabove, there is no merit in the prayer made in the instant applications, under Rule 31 of Chapter 4(F) of the High Court Rules and Orders, read with Clause 26 of the Letters Patent.

53. In *DLF Universal Ltd v. State Bank of India*, 2012 SCC OnLine Guj 972, Ld. Single Bench of Gujrat High Court observed that in case of difference of opinion, the point of difference should be decided following the procedure referred in S. 98 of the Code of Civil Procedure and Clause 36 of the Letters Patent Appeal, thus, held the reference as incompetent, and since one of the Hon'ble Judges stood transferred, referred the matter to Hon'ble Acting Chief Justice for considering whether the entire matter needed rehearing.

54. In *Amarendra Arya v. State of Bihar & others* , LPA No. 1469 of 1995, decided on 25 Sep 2019, the full bench of Patna High Court observed,

60. In view of the aforesaid, it is very much clear that in the event of difference of opinion between the members of the Division Bench, the Division Bench will record its difference of opinion and on the discretion of the Chief Justice the matter will be referred to the third Judge, either Single or Division Bench and the third Judge will confine his opinion on the point which has been referred and will not embark on the point or points not referred, but in a situation if the third Judge gives an opinion apart from the point referred, I am of the opinion that when the matter again goes to the Division Bench for final pronouncement, the majority of the opinion will be the basis for judgment on the point which was referred. But, it is also made clear that on consideration of judgment of different High Courts, it can safely be recorded that when a single issue or several issues have been raised and on few issues the Division Bench agreed and on certain issues they have differed, that issues on which there is difference, will be referred to the third Judge and the third Judge would give his opinion on the point referred, but will not have a jurisdiction to finally pronounce the judgment between the parties, but the referee Judge has only to record his opinion and remit back the same to the Division Bench and the Division Bench will formally declare the majority opinion and then the Division Bench will not start a de novo hearing on the issue which has already been concluded. The majority opinion is to be culled out and final verdict could be pronounced, as it will be a matter of declaration of final verdict, but if on any point, apart from the reference, the referee Judge gives his opinion on such point, the parties will have a liberty to address the Division Bench on new point which was not subject matter of

consideration and the Division Bench will decide the new point and give the final decision on that point.

55. Although, in *DLF Universal Ltd v. State Bank of India*, 2012 SCC OnLine Guj 972, Ld. Single Bench of Gujrat High Court observed that in case of difference of opinion, the point of difference should be decided following the procedure referred in S. 98 of the Code of Civil Procedure and Clause 36 of the Letters Patent Appeal, thus, held the reference as incompetent, however, In *Firm Ladhuram Rameshwardayal v. Krishi Upaj Mandi Samiti, Shivpuri*, AIR 1978 MP 10, full bench of Madhya Pradesh High Court observed that it is not the requirement of law that the case must be laid before the same Division Bench which first heard it, after it is returned by the third Judge. When one of the Judges constituting the Division Bench which first heard the case, has retired or is not otherwise available, the Chief Justice can constitute another Division Bench to decide the case according to the method provided by Clause 26 of the Letters Patent. All other decisions mentioned above were on entirely different circumstances and would not apply in the circumstances and factual matrix of this case.

56. None of the decisions mentioned above state what prejudice would it cause if the third Judge also culls out the points. What difference would it actually make if another Division Bench is constituted and they state the points of difference? Authors of Letters Patent did not contemplate the current situation. Moreover, culling out the points of difference is not a herculean task but just a ministerial act, that even the third Judge can also do very comfortably. *Lex necessitatis est lex temporis* i.e. *instantis* - In a case of extreme necessity everything is common. The law of necessity is the law of time, that is time present.

57. The Division Bench comprising of Hon'ble Mr. Justice Dharam Chand Chaudhary and Hon'ble Mr. Justice Sureshwar Thakur pronounced their dissenting judgments on 11th March 2020, the last working day of Hon'ble Mr. Justice Dharam Chand Chaudhary, when he reached the age of superannuation. Given above, the Hon'ble Division Bench probably could not get time to state the points of difference. Accordingly, Ld. Division Bench directed the matter to be put up before Hon'ble Chief Justice. Thus, the directions to Hon'ble Chief Justice were not to make a roster of a new division bench to state the points of difference. After that, Hon'ble Chief Justice assigned the matter to this Court.

58. Now, culling out the points of a difference does not require analysis and forming an opinion on the matter's merits. Hypothetically, even if this job was to be done by a new division bench, this Court can also do the same. In the Application filed under S. 26 of Letters Patent, even the applicant has thrown light on some points of difference. The Doctrine of necessity would empower this Court to cull out the points of difference so that the matter does not linger on, and at least the Courts pronounce the final verdict at the earliest. Given above, I proceed to cull out and state the points of difference from the dissenting verdicts in the Letters Patent Appeals, of equally divided bench of two Judges.

59. DISSENTING EXCERPTS:

Hon'ble Justice Dharam Chand Chaudhary

Hon'ble Justice Sureshwar Thakur

8. As pointed out at the very outset, since both the writ petitions have been dismissed on the grounds of delay and laches, acquiescences and also bad on account of clubbing of various causes of action, therefore, the arguments heard only qua this part of the case as learned Single Judge has not touched the merits of the case and in case the findings recorded by learned Single Judge are not ultimately found to be legally and factually sustainable on analyzing the arguments to be addressed by the parties on both sides, we may proceed further to hear this matter on merits also because the Apex Court in *Roma Sonkar vs. Madhya Pradesh State Public Service Commission & anr.*, Civil Appeal Nos. 7400- 7401/2018, decided on 31.7.2018 has deprecated the practice of remanding of case to Single Judge while holding that the Single Judge is not subordinate to the Division Bench. Also that the Division Bench in Letters Patent Appeal if sets aside the judgment of the Single Judge should not remand the same to learned Single Judge and rather decide on merits itself.

6. Even though, the judgment rendered, by, the learned Single Judge of this Court, is, rested upon his accepting preliminary objection(s), as, became, reared by the private respondents concerned, hence, in their respective replies, as, became furnished to the respective petitions, (a) objections whereof, appertain to the writ petitions, being hit by vices, of, delay and laches, and, also theirs being permeated with entrenched vices of estoppel, and, acquiescences. However, since, the emphatic nuance, of, the afore assigned reason, is, made dependent, upon, various citations, each carrying, a, proposition of law, vis-a-vis, rather the completely settled, and, determined apposite inter se seniority, being unamenable, for re-opening, conspicuously after elapsings, of, an unduly procrastinated period of time, since the apt contentious inter se seniority, becoming clinched or settled. Obviously, hence, when the afore assigned reason, by the learned Single Judge, is, also necessarily entwined with the merits, of, the case, (b) given his necessarily making a concomitant conclusion, vis-a-vis, the contentious inter-se seniority, amongst, the aggrieved appellants, and, the private respondents, hence, becoming finally rested or settled, (c) whereas, for, the reasons to be assigned hereinafter, the contentious inter se seniority amongst them, is, yet in a state of flux or is yet to be formidably clinched, hence, thereupon, it is deemed fit to also decide, the, entire lis engaging the parties at contest, hence, on merits. (d) The further reason for this Court, becoming constrained, to, allow the writ petitions, after, its proceeding, to delve deep into the merits, of, the case, and, to thereafter also obviously make a complete adjudication, vis-a-vis, the contentious competing claims, of, the contesting litigants concerned, is, sparked, by, the factum, that, the Hon'ble Apex Court in *Roma Sonkar Vs. Madhya Pradesh State Public Service Commission and another*, Civil Appeal Nos. 7400-7401/2018, decided on

31.7.2018 (e) has deprecated the practice of remanding, of, a lis, to, the learned Single Judge, (f) and, has also held that the learned Single Judge, is, not subordinate to the Division Bench, (g) besides with, a, further expostulation of law being borne therein, that, the Division Bench, in, a, Letters Patent Appeal, if sets aside the judgment, of, the learned Single Judge, (h) thereupon, it should not remand the same, to, the learned Single Judge, rather should proceed to decide the lis on merits, (i) hence, becomes the supplemental principle, for, the undersigned, proceeding to completely rest, the, contentious claim(s), of, the hereat contesting litigants. Moreover, with the undersigned accepting the report, of, the Hon'ble Judges Committee, hence, constituting, the apt facilitator, for, the making, of, a complete adjudication, of, the, extant lis, (j) thereupon, too, upon disapprobation, of, the, verdict, of, the, learned Single Judge, as, has become, untenably anvilled, upon, vices, of, delay, and, laches, rather baulking the respective petitioners, hence, it is deemed fit, to, thereon(s) i.e. the Hon'ble Judges Committee's report, rather finally rest the extant lis

On analyzing rival submissions, the only question which has arisen for consideration in these appeals is as to whether the claim as laid in the writ petitions is not stale nor is there any delay and laches on their part nor are they guilty of acquiescences as well as fence-sitters ?

25. Now, coming to the above question having arisen for consideration in these appeals, it would not be improper to observe that this case has a chequered history because the promotee officers of and on had been espousing their claims qua seniority vis-à-vis direct recruits since long. We may refer here CWP No. 61 of 1999 filed by the then H.P. Judicial Service Association and its members i.e. the subordinate Judicial Officers at bottom in the seniority list and also the Officers inducted to the cadre of the then Higher Judicial Service by way of promotion challenging therein the recruitment of direct recruits to the service. The said writ petition remained pending in this Court till 2005 and it was disposed of vide order dated 18.4.2005 in the following terms:

"As the hearing was in progress, Mr. Rajiv Sharma, learned Senior counsel appearing for respondent o. 2 submitted that his client has issued communication No. HHC/GAZ/10- 17/90-Vol-II-1933-35 dated 28th January, 2005, (which is hereby taken on record by us), whereby a gradation list of the members of H.P. Judicial Service, as it stood on 1.1.2005 was circulated. According to Mr. Rajiv Sharma, the petitioners have not challenged the gradation list circulated along with the aforesaid communication.

Without going into the disputed question whether in the light of various orders passed by this Court in this case from time to time, the petitioners were or were not required to challenge the aforesaid gradation list, we feel that in the facts and circumstances of this case, if the petitioners are afforded an opportunity of filing objections to the aforesaid gradation list and making representation(s) for suitable placement/replacement of the persons covered therein, and if such objections and representations are considered by respondent No. 2, on their

merits and in accordance with law, and disposed of within a reasonable time, the interests of all the parties shall be suitably protected. On this suggestion coming from the Court, Mr. Matthewal, learned Senior Counsel appearing for the petitioners submits that the petitioners are in absolute agreement with this suggestion and that they would withdraw this Writ petition with liberty to submit representation(s) and filing objection to the aforesaid gradation list and request the High Court on its administrative side to consider such objections/representations on their merits and in accordance with law and to order re-location/replacement of the persons concerned in the aforesaid gradation list. Mr. Anand Sharma, learned counsel appearing for respondent No. 3 and Mr. Shrawan Dogra, learned counsel appearing for respondent No. 4 also have no objection to this course being adopted.

Mr. Rajiv Sharma, submits and undertakes before us that if the petitioners indeed file objections and submit representations against the aforesaid gradation list, the High Court on its administrative side shall consider such objection(s)/representation(s) and dispose them of in accordance with law and on their merits within the shortest possible time, preferably within 2-3 months.

Based on the aforesaid agreement between the parties, the Writ petition is disposed of as settled. We pass the following order and issue hereinbelow mentioned directions:-

1. Only in so far as the placement of direct recruited Additional District Judges in the aforesaid gradation list is concerned (and for no other reason or ground), it shall be open to petitioner No. 1 as well as other aggrieved Officers, if any, to file objections or make representations against their alleged improper placement and for seeking rectification/redressal of grievances. Such objections shall be filed and such representations shall be made, if any, latest by 30th April, 2005.
2. The High Court on its administrative side shall receive the aforesaid objections/representations, process the same, examine and consider them on their merits and dispose them of in accordance with law.
3. If in the process of consideration, the High Court feels that anyone whose name has been included in the aforesaid gradation list needs to be displaced to a lower position, an opportunity of being heard shall be afforded to such person but only through the mechanism of a written representation. No such person shall have any right of a personal hearing.
4. The High Court on its administrative side shall take a final decision in the aforesaid matter on its merits and in accordance with law as expeditiously as possible and in any case by 31st July, 2005.
5. If anyone feels aggrieved by the decision of the High Court, it shall be open to such person to approach this Court again on the judicial side.

In view of the aforesaid order, no earlier representation filed on the subject by any one shall be entertained. All such earlier representations shall be consigned

to records without taking any action thereupon.

Since this Writ petition is being disposed of as settled in the light of the aforesaid agreement between the parties, we wish to clearly place on record that we have not gone into any question relating to the merits of the controversy between the parties nor have expressed any opinion with regard thereto. All questions and issues are left open."

26. Consequent upon this order, representations were made by the members of H.P. Subordinate Judicial Service including the Judicial Officers similarly situated to the petitioners, which were considered by the Judges' Committee and recommended to be rejected. The High Court has accepted the report of the Judges' Committee in its meeting held on 21.9.2017. Subsequently, the order of rejection was also conveyed to the representationists. Though, in the order *ibid* passed in CWP No. 61 of 1999, liberty was granted to the representationists in case their representations rejected by the High Court on administrative side, however, they opted for not challenging the order of rejection of their representation(s).

7. The concurrent predominant reason, which prevailed, upon, the learned Single Judge, and, also, upon, the, Hon'ble Mr. Justice Dharam Chand Chaudhary, Judge, for, both making a conjoint verdict, upon, the afore LPAs, is, grooved, (ii) upon, a decision of the Hon'ble Apex Court rendered in a case titled as *B.S. Bajwa and another v. State of Punjab and others*, reported in AIR 1999 SC 1510, wherein, the Hon'ble Apex Court, has expostulated, that, any belated endeavours, as, made by the aggrieved, in, challenging, the, drawing(s), of, seniority lists, cannot be countenanced, when hence it would untenably beget disturbing(s) or unsettling(s), of, a clinched or a finally rested controversy. Further thereonwards reliance, is, also conjointly placed, by the learned Single Judge, and, by one of us (Hon'ble Mr. Justice Dharam Chand Chaudhary, J.), upon, a judgment of the Hon'ble Apex Court, rendered in a case titled, as, *Bimlesh Tanwar vs. State of Haryana and others*, reported in (2003)5 SCC

604, (i) wherein, it has been propounded, vis-avis, claims, of, seniority not being a fundamental right, rather being merely, a, civil right. Furthermore, it has also been expostulated therein, that, inter se seniority, of, all candidates, who are appointed, on the same day, would be dependent, on, the rules governing the same, and, that in the absence of rules governing seniority, an executive order, may be issued, to, fill up the gap.

8. However, the decision of the Hon'ble Apex Court, as, rendered in a case titled, as, *B.S. Bajwa and another v. State of Punjab and others*, and, reported in AIR 1999 SC 1510, for, hence detailed/ad nauseam reasons assigned hereinafter, is, applicable, only, upon, the contentious seniority becoming finally settled or it becoming conclusively rested, (a) and, obviously it becomes inapplicable, as hereat, upon, the contentious seniority list(s), as prepared, vis-a-vis, the contesting litigants concerned, being, yet in a state of flux, or it remaining

unsettled, rather, it remaining not finally clinched. Moreover, the decision of the Hon'ble Apex Court rendered, in, a case titled as *Bimlesh Tanwar vs. State of Haryana and others*, reported in (2003)5 SCC 604, is also rendered inapplicable, vis-a-vis, the factual matrix prevailing hereat, given, the reasons assigned hereinafter, rather making palpable disclosures, vis-a-vis, the verdict rendered by the Hon'ble Apex Court, in a case titled, as, *All India Judges' Association & Ors vs. Union of India*, reported in (2002)4 SCC 247, hence, becoming acquiesced, to, be breached, (b) whereas, it constitutes the settled inflexible, and, inviolable norm(s), for, determining the contentious inter se seniority, amongst, all the competing incumbents. Re-emphasisingly, it, underscores, the, necessity, of, induction(s) into service, of, the inductees concerned, rather only , upon, the apt strictest adherence(s) being resorted, vis-a-vis, the therein(s) expostulated norm, of, "post based roster", and, not in consonance, with, the adopted hereat, invalid norm of, "vacancy based roster". Unhesitatingly, and, apart therefrom also uncontrovertedly, uptill now, (c) given, the stand projected, by, the High Court in its reply, and, also given the displays made, in, the minutes drawn in the year 2010, by the Hon'ble Judges Committee, displays whereof rather with utmost candour, exemplify vis-a-vis, the, High Court, explicitly acquiescing, vis-a-vis, the afore regulatory mechanism, for, induction into service, to, the post of Addl. District Judge(s)/District Judge(s), hence, becoming breached, (d) thereupon, the afore acquiesced factum, does necessarily, beget, a, further corollary, vis-a-vis, the afore expostulated canon, being transgressed. The relevant portion, of, the report of the Hon'ble Judges Committee, as, drawn in the 2010, reads as under: "After coming into force of the new Rules, the cadre strength has got increased to 34. Now as per extant Rules half of the posts are to be manned by promotees, 1/4th by recruitment from amongst the Civil Judges (Senior Division), on the basis of Limited Competitive Examination and the remaining 1/4th by way of direct recruitment from amongst the practicing Advocates. The posts are to be manned by the persons from three sources, on Post Based Roster. 34-point Roster (Annexure-B) is required to be maintained.

As per 34-Point Roster, first two posts are to be manned by promotees, third by the Civil Judge (Senior Division) selected on the basis of Limited Competitive Examination, and, the fourth by direct recruitment from amongst the practicing Advocates, and similarly fifth and sixth posts by the promotees, seven post by the Civil Judges (Senior Division), on the basis of Limited Competitive Examination, and, the eighth post by direct recruit from amongst the practicing Advocates, and so on. This way out of the total cadre of 34, 18 posts are required to be manned by promotees, 8 by members of Judicial Service, selected on the basis of Limited Competitive Examination and the remaining 8 by direct recruitment from amongst the practicing Advocates.

However, after coming into force of the extant Rules, we have been following the vacancy based roster, that is to say that we have been rotating the vacancies in the ratio of 2:1:1, amongst the promotees, Officers selected by

Limited Competitive Examination, and, direct recruits from amongst the practicing Advocates, correctness of which is doubtful."

9. Succor and support is also drawn, by one, of, us (Hon'ble Mr. Justice Dharam Chaudhary, J.), for, his concluding, that, the petitioners/appellants' belated apposite challenge, rather warranting its being discountenanced, hence, from, a decision, of, the Hon'ble Apex Court, rendered in a case titled as K.R. Mudgal and others vs. R.P. Singh and others, reported in AIR1986 SC 2086, besides also from a decision, of, the Hon'ble Apex Court rendered, in, a case titled as Shiba Shankar Mohapatra and others vs. State of Orissa and others, reported in (2010)12 SCC 471, (i) wherein, it has been expostulated, that, the controversy appertaining to the seniority, of, the litigants therein, was amenable rather for declinings, as, the apposite agitations happened, hence, at a belated stage, and, further that the Courts exercising public law jurisdiction, rather not encouraging agitations, of, stale claims, especially where the right of third parties hence crystallise, in, the interregnum. However, with all firmness, and, formidability, the afore verdicts are again applicable only qua settled, and, finally determined seniority lists, as, made in consonance, with, the then prevailing rules, guidelines or executive instructions, and, reiteratedly are inapplicable hereat, as, the apposite lis remains extantly both unsettled, and, unclinched. Even further thereonwards, in a verdict rendered, by, the Hon'ble Apex Court in Shiba Shankar Mohapatra's case (supra), the Hon'ble Apex Court, dehors, any statutory Rules, for, determining the inter-se seniority, of, the contesting litigants therein, had deemed it, not to disturb the uninterrupted practice, of, the State, in, preparing, the, inter-se seniority list, of, the officers concerned, and, obviously hence had thereafter concluded, that, when, the, reckoning(s) or the concomitant rankings, in, the seniority list, of, the contesting litigants therein, hence, remained unchallenged rather within, a, reasonable period, of, time, hence since its drawing, (ii) thereupon, the aggrieveds' challenge, became hit by, the, baulkings vices, of, delay, and, laches, (iii) especially when no good and tangible ground, was, coming forth, in, explication, of, the delay, in, challenging the seniority list, (iv) necessarily hence, both the afore verdicts, cannot supersede, the, verdict, of, the Hon'ble Apex Court rendered, in, a case titled as All India Judges' Association & Ors vs. Union of India, reported in (2002)4 SCC 247, and, also cannot withstand the clout, of, the, apposite mandatory governing rules, hence, wherefrom, the, inter se disputed seniority, of, the contesting litigants, has, yet to be determined. The gravamen of the afore conclusion is formed obviously, upon, the factual matrix prevailing, in, the afore alluded judgment(s), as, rendered by the Hon'ble Apex Court, and, with the factual contentious matrix borne, in, the extant case, hence being completely and diametrically contradistinct, rather therefrom, inasmuch, as, it being fully dependent solitarily, upon, the verdict (supra), thereupon, also it would be unbefitting, to, draw any succor therefrom.

36. Anyhow, the application IA No. 334 of 2014 when ultimately came to be listed before the apex Court on 13.3.2018 after the High Court filed the report

and also the affidavit in terms of order dated 9.10.2017, following order (Annexure P-15) came to be passed therein: "The issue raised in I.A. No. 334 of 2014 in Writ Petition (Civil) No. 1022 of 1989, as it appears to us from the materials on record, relates to the disputes inter se between the individuals/groups, which, in our considered view, would not be appropriate for determination by this Court in an I.A. (No. 334 of 2014) filed in W.P. (C) No. 1022/1989 (All India Judges Association and others v. Union of India and other). We, therefore, decline to entertain the I.A. any further leaving the parties to have resort to such remedies as may be available to them in law. I.A. No. 334 of 2014 in Writ Petition (Civil) No. 1022/1989 is disposed of in the above terms."

37. It is thus seen from the order *ibid* that the apex Court has declined to entertain the interim application keeping in view the disputes inter se between the individuals/groups raised therein and it was left open to the parties to resort to remedies available to them in accordance with law. Therefore, I.A. No. 334 of 2014 was unsuccessfully pursued by the petitioners in the Hon'ble Apex Court.

38. Now if coming to the order dated 14.7.2016 (Annexure R-3/F) passed in this application and reproduced hereinabove though it was observed that in view of CWP No. 696 of 2010 pending in this Court, the apex Court deemed it proper to relegate the parties to work out their remedy in the said writ petition and await the outcome thereof. The petitioners, however, have not opted for pursuing the writ petition any further or approached the High Court with a prayer to hear the same at an early date and rather sought the permission to withdraw the same on 4.11.2016. The order annexure R-3/K to the reply filed on behalf of respondents No. 3 to 6 reveals that learned counsel representing the petitioners on instructions had sought the permission unconditionally to withdraw the writ petition and the permission so sought was opposed by the private respondents herein on the ground that certain rights have accrued in their favour in view of the orders passed by this Court from time to time. This Court, however, without going into such contentions permitted the petitioners to withdraw the writ petition and rightly so because the same was sought to be withdrawn unconditionally. Therefore, irrespective of the apex Court directed the petitioners to pursue their remedies in accordance with law. Instead of doing so, they did not opt to do so and even writ petition No. 696 of 2010 was also withdrawn lateron unconditionally.

39. After the Apex Court declined to entertain I.A. No. 334 of 2014 and disposed of the same vide order Annexure P-15 dated 13.3.2018 by leaving it open to the parties to resort to such remedies as may be available to them in accordance with law. It is these writ petitions which have now been filed only by the petitioners and as regards the Officers similarly situated and identically placed to them in the cadre, they have not joined them (the writ petitioners) as party in these writ petitions. The similarly situated Officers in the cadre are either satisfied with the seniority assigned to them or may approach after final outcome of these writ petition if need for them to do so arises because the

discussion hereinabove reveals that different set of the Judicial Officers/promotees have challenged the direct recruitment to the cadre and also the inter se seniority in this Court and also the Apex Court as per their convenience, of course, unsuccessfully. In the given facts and circumstances as discussed hereinabove if it is not a case of acquiescence of claims, what else is any other inference which can be drawn therefrom. The present is, therefore, a case where the petitioners have acquiesced their claims and as such, have no right to claim the seniority over and above the private respondents.

10. The Hon'ble Apex Court, in, a verdict rendered in a case titled, as, Direct Recruit Class II Engineering Officers' Association vs. State of Maharashtra and others, reported in (1990)2 SCC 715, has in paragraphs No. 47 (D) and 47(E) thereof rather held:- "47. To sum up, we hold that:-

(D) If it becomes impossible to adhere to the existing quota rule, it should be substituted by an appropriate rule to meet the needs of the situation. In case, however, the quota rule is not followed continuously for a number of years because it was impossible to do so the inference is irresistible that the quota rule had broken down. (E) Where the quota rule has broken down and the appointments are made from one source in excess of the quota, but are made after following the procedure prescribed by the Rules for the appointment, the appointees should not be pushed down below the appointees from the other source inducted in the service at a later date." Though, with immense fortifying vigour, dependence, is, made thereon, by, the private respondents concerned, to, contend qua even, if their induction into service, is, in excess, of, the afore norms, as, become prescribed, in, a case titled as All India Judges' Association & Ors vs. Union of India, reported in (2002)4 SCC 247, (i) yet they are not amenable, for, theirs being pushed down below, the, appointees drawn from other valid source(s), hence subsequent, to their induction into service. However, even the afore dependence, as, made thereon, is, rendered extremely frail, and, also becomes completely enfeebled, through, the imperative diktat rendered, by, the Hon'ble Apex Court, in, a case titled as All India Judges' Association & Ors vs. Union of India, reported in (2002)4 SCC 247, besides, through, categorical directions rendered, upon, the High Court, of, H.P., by the Hon'ble Apex Court, in, IA No. 17/2011 in IA No.244/2009 and IA Nos. 1 & 2 in IA Nos. 17/2011 in IA No.244/2009 and IA Nos. 334/2014, IA Nos. 335, 336, 337, 338/2015 and IA No. 339 & 341/2016, on 28.4.2016, the relevant portion whereof reads, as, under:- "In as much as, 34 point roster having been drawn by the High Court and the relevant rules relating to seniority, namely, Rule-13 has also come into effect, the only other question to be decided is as to how it should be implemented as from 31.3.2003, as directed by us in the judgment referred to above. While drawing the 34 point roster, the High Court has mentioned that the same would be followed after 31.3.2010.

Having regard to the specific direction of this Court in the judgment referred to above in paragraph 23, we are of the view that it is required to ascertain as to

how the 34 point roster for the three different channel are to be worked out. The High Court is, therefore, directed to apply Rule 13 which prescribes as to how the seniority to be drawn by applying the said Rules, ascertain the roster point for the three different categories of promotees and direct recruits and carry out the said exercise from 31.3.2003." (a) wherein the Hon'ble Apex Court, has, cast an inflexible mandate, upon, this Court, to, apply the afore Rule 13, strictly in consonance, with, the verdict of the Hon'ble Apex Court, rendered in a case titled as All India Judges' Association & Ors vs. Union of India, reported in (2002)4 SCC 247, to, hence for therefrom, it making determination(s), of, the inter se seniority, of, the inductees, into, the rank or post of Addl. District Judge(s)/District Judge(s), and, who become drawn thereinto, from, the afore contemplated streams or channels. The inviolability of the afore imperative diktat, as afore stated, has been acquiesced, to be breached, in, the afore report, of, Hon'ble Judges Committee, and, when rather in pursuance thereto, the other Two Hon'ble Judges Committee of this Court, comprising Hon'ble Mr. Justice Sandeep Sharma, J., and, Hon'ble Mr. Justice Vivek Singh Thakur, J., has, in completest deference thereto, hence, made anad nauseam prescription, for, determining or settling the inter se seniority, of, the inductees, to, the posts of Addl. District Judge(s)/District Judge(s), (i) whether appointed, from, the direct recruits, (ii) or from amongst the Civil Judges (Senior Division), (iii) besides from the category(ies) appertaining, to, the Limited Competitive Examination, (iv) thereupon, the afore report, of, the abovesaid committee, does warrant, qua hence the deepest deference being meted thereto

40 Now , if coming to the second limb of arguments addressed on behalf of the writ petitioners, no doubt the apex Court in All India Judges' Association & ors. vs. Union of India, (2002) 4 SCC 247 has held as under:

41. One of the method of avoiding the seniority dispute, as per direction of the Apex Court is to apply quota in relation to posts and not in relation to vacancies. Further direction to the High Courts was to frame proper rules and methods by 31.3.2003. It is consequent upon such direction of the Apex Court, respondent No. 1 in consultation with the High Court of Himachal Pradesh has framed H.P. Judicial Service Rules, 2004.

42. On and after coming into force the Rules, the recruitment to the Judicial Service in the cadre of District/Addl. District Judges is being made strictly in terms thereof. True it is that instead of following "post based roster" as directed by the Apex Court in Judges' Association case, respondent No. 2 continued to follow "vacancy based roster" up to 31.3.2010. The matter with regard to following the "post based roster" or "vacancy based roster" came to be considered by a Committee of the Judges of this Court which has given its report dated 30.3.2010, Annexure P-9 to CWP No. 2061 of 2018. It has been noticed in the report that after coming into force 2004 Rules, respondent No. 2 is still following "vacancy based roster" i.e. the rotation of the vacancies in the ratio of 2:1:1 amongst promotee, selection made by limited competitive examination

and direct recruitment from amongst the practicing Advocates. The Judges' committee, therefore, had every suspicion qua the correctness of following "vacancy based roster" and as such recommended that in future respondent No. 2 should follow the "post based roster". The vacancies in existence on 30.3.2010 when the report Annexure P-9 was submitted was, therefore, recommended to be filled by way of applying the "post based roster". The report Annexure P-9 when taken up for consideration by the Full Court was approved and as such on and w.e.f. 31.3.2010, respondent No. 2 is following the "post based roster"

43. True it is that respondent No. 2 was following "vacancy based roster" contrary to the direction of the Apex Court in Judges' Association case (supra), however, respondent No. 2 when detected such mistake has taken a decision to follow the "post based roster" in the matter of recruitment to the cadre of District/Addl. District & Sessions Judges and even stopped the recruitment from direct category candidates till the promotees and the Sr. Civil Judges eligible for accelerated promotion gets their quota fulfilled. Now, respondent no. 2 is following the "post based roster". All the 3 categories i.e. promotees, eligible Sr. Civil Judges under the limited competitive examination and the direct recruits are being provided their respective quota and there is no complaint in this regard.

4. Shri S.C. Kainthala belongs, to, the apposite feeder category of Civil Judge (Senior Division), qua wherewith a 50% quota is prescribed, for, promotion, to, the post District Judge/ Additional District Judge , hence, on the apposite contemplated principle, of, merit-cum-seniority, (a) and, also upon the passing(s), of, suitability test(s), as may be prescribed, and, conducted, by, the High Court, in, accordance with the regulations. However, Mr. Rajeev Bhardwaj, belongs to the category, of, limited competitive examination(s), as, ordained to be conducted, from, amongst the cadre, of, Civil Judges (Sr. Division), vis-a-vis, the promotional post, of, District Judge/Addl. District Judge, and, qua wherewith, a, 25% quota is prescribed. However, the private respondents, belong to the category, of, direct recruitees or from the envisaged stream(s), of, eligible advocates, and, qua wherewith, a, 25% quota is prescribed, for their induction(s), as, Additional District Judge(s)/District Judge(s).

5. Apart from the afore imperative necessity, hence, of extracting the afore apposite Rule, for, therethrough making determination, vis-a-vis, the competing claim(s), of, the writ petitioners, and, of, the private respondents concerned, and, as, appertaining to their inter se seniority, (a) also, the apposite Rule 13, of, the Rules and Regulations, of, H.P. Judicial Services, rather, besides therealongwith regulating, the, hereat res controversia, hence, for, therethrough(s) reckoning their inter se seniority, does necessarily, enjoins its extraction. The apt underlined portion, of, Rule 13, of, the Rules and Regulations of the H.P. Judicial Services, reads as under:- "13. Seniority:- (1) Where officer are recruited to a cadre by promotion and direct recruitment, seniority shall be regulated by the roster maintained for such recruitment. Officer appointed

against higher point of roster shall rank senior to the officer appointed a lower point. Provided that no person appointed to a cadre by direct recruitment shall for the purpose of fixation of his seniority claim any particular place in seniority unconnected with the date of his actual appointment. (2) where more than one Officers are promoted to cadre at the same time inter-se seniority of persons so promoted shall be determined by their inter-se seniority in the lower cadre. (3). Where direct recruitment is made to a cadre, the inter-se seniority of persons so recruited shall be in the order in which their names are arranged in the select list. (4) Every year in the month of January seniority list of officers in all cadres shall be prepared and published by the High Court and the lists so published shall be issued for the purpose of making promotions to the next higher cadres." Moreover, the verdict rendered by the Hon'ble Apex Court in a case titled, as, All India Judges' Association & Ors vs. Union of India, reported in (2002)4 SCC 247, also is the prima donna reckoner, for, the requisite purpose. In the verdict supra, the hon'ble Apex Court has rendered explicit directions, upon, all the High Courts concerned, to specify the quotas, in, relations to posts, and, not in relation to vacancies. Further thereonwards it has also been mandated therein, that, the afore quotas shall constitute, the, regulatory mechanism, hence, for settling all disputes arising, amongst, the competing litigants' claims, vis-a-vis, their contentious inter-se seniority, upon, theirs respectively becoming inducted against the post, of, Additional District Judge(s)/District Judge(s), from amongst, the stream, of, direct recruits, and, from the afore apposite alternative thereto channels or streams, of, Civil Judges (Senior Division). However, the afore expostulation of law borne in All India Judges' Association & Ors vs. Union of India, reported in (2002)4 SCC 247, has been directed, to, hold only prospective effect, and, also a further mandate, is, borne therein, vis-a-vis, the seniority of the apposite inductees, into, service, as, Addl. District Judge(s)/ District Judge(s), especially prior to 31st March, 2003, even if, their respective inductions thereto, is, in excess of the apposite quota, rather not ordaining any disturbances or unsettling(s). The relevant paragraphs No.27, 28 and 29, of, the verdict supra rendered, by, the Hon'ble Apex Court, reads as under:- "27. Another question which falls for consideration is the method of recruitment to the posts in the cadre of higher judicial service i.e., District Judges and Additional District Judges. At the present moment, there are two sources for recruitment to the higher judicial service, namely, by promotion from amongst the members of the sub-ordinate judicial service and by direct recruitment. The subordinate judiciary is the foundation of the edifice of the judicial system. It is, therefore, imperative, like any other foundation, that it should become as strong as possible. The weight on the judicial system essentially rests on the subordinate judiciary. While we have accepted the recommendation of the Shetty Commission which will result in the increase in the pay scales of the subordinate judiciary it is at the same time necessary that the judicial officers, hardworking as they are, become more efficient. It is imperative that they keep abreast of knowledge of law and the latest pronouncements, and it is for this reason that the Shetty Commission has recommended the establishment of a

judicial academy which is very necessary. At the same time, we are of the opinion that there has to be certain minimum standards, objectively adjudged, for officers who are to enter the higher judicial service as Additional District Judges and District Judges. While we agree with the Shetty Commission that the recruitment to the higher judicial service i.e., the District Judge cadre from amongst the advocates should be 25 per cent and the process of recruitment is to be by a competitive examination, both written and viva voce, we are of the opinion that there should be an objective method of testing the suitability of the subordinate judicial officers for promotion to the higher judicial service. Furthermore, there should also be an incentive amongst the relatively junior and other officers to improve and to compete with each other so as to excel and get quicker promotion. In this way, we expect that the calibre of the members of the higher judicial service will further improve. In order to achieve this, while the ratio of 75 per cent appointment by promotion and 25 per cent by direct recruitment to the higher judicial service is maintained, we are, however, of the opinion that there should be two methods as far as appointment by promotion is concerned : 50 per cent of the total post in the higher judicial services must be filled by promotion on the basis of principle of merit-cum-seniority. For this purpose, the High Courts should devise and evolve a test in order to ascertain and examine the legal knowledge of those candidates and to assess their continued efficiency with adequate knowledge of case law. The remaining 25 per cent of the posts in the service shall be filled by promotion strictly on the basis of merit through the limited departmental competitive examination for which the qualifying service as a Civil Judge (senior division) should be not less than five years. The High Courts will have to frame a rule in this regard. 28. As a result of the aforesaid, to recapitulate, we direct that recruitment to the higher judicial service i.e., the cadre of District Judge will be: [1](a) 50 per cent by promotion from amongst the Civil Judges (senior division) on the basis of principle of merit-cum-seniority and passing a suitability test; (b) 25 per cent by promotion strictly on the basis of merit through limited competitive examination of Civil Judges (senior division) having not less than five years qualifying service; and (c) 25 per cent of the posts shall be filled by direct recruitment from amongst the eligible advocates on the basis of the written and viva voce test conducted by respective High Courts. [2] Appropriate rules shall be framed as above by the High Courts as early as possible. 29. Experience has shown that there has been a constant discontentment amongst the members of the higher judicial service in regard to their seniority in service. For over three decades, large number of cases have been instituted in order to decide the relative seniority from the officers recruited from the two different sources, namely, promotees and direct recruits. As a result of the decision today, there will, in a way, be three ways of recruitment to higher judicial service. The quota for promotion which we have prescribed is 50 percent by following the principle "merit-cum-seniority" 25 percent strictly on merit by limited departmental competitive examination and 25 per cent by direct recruitment. Experience has also shown that the least amount of litigation in the country, where quota system in recruitment exists, in

so far as seniority is concerned, is where a roster system is followed. For example, there is, as per the rules of the Central Government, a 40-point roster which has been prescribed which deals with the quotas for Scheduled Castes and Scheduled Tribes. Hardly, if ever, there has been a litigation amongst the members of the service after their recruitment as per the quotas, the seniority is fixed by the roster points and irrespective of the fact as to when a person is recruited. When roster system is followed, there is no question of any dispute arising. The 40- point roster has been considered and approved by this Court in *R.K. Sabharwal and Ors. v. State of Punjab*. One of the methods of avoiding any litigation and bringing about certainty in this regard is by specifying quotas in relation to posts and not in relation to the vacancies. This is the basic principle on the basis of which the 40-point roster works. We direct the High Courts to suitably amend and promulgate seniority rules on the basis of the roster principle as approved by this Court in *R.K. Sabharwal's case* (supra) as early as possible. We hope that as a result thereof, there would be no further dispute in the fixation of seniority. It is obvious that this system can only apply prospectively except where under the relevant rules seniority is to be determined on the basis of quota and rotational system. The existing relative seniority of the members of the higher judicial service has to be protected but the roster has to be evolved for the future. Appropriate rules and methods will be adopted by the High Courts and approved by the States, wherever necessary by 31st March, 2003."

44. There is no quarrel so as to law laid down by the Apex Court and cited on behalf of the petitioners in *M.S. Sandhu & another vs. State of Punjab & others* (2014) 6 SCC 514, *Narinder Singh vs. Surjit Singh* (1984) 2 SCC 402, *M/S Shenoy & Co. represented by its partner Bele Srinivasa Raoa Street Bangalore and others vs. Commercial Tax Officer, Circle II, Bangalore and others*, (1985(2) SCC 512, *Spencer & Company Ltd. And another vs. Vishwadarshan Distributors Pvt. Ltd. & others* (1995)1 SCC 259, *M/S Bayer India Ltd. And others vs. State of Maharashtra & others* (1993) 3 SCC 29 and *U.P. Pollution Control Board & ors. vs. Kanoria Industrial Ltd. And another* (2001) 2 SCC 549, that the judgments/orders passed by the Apex Court are binding on all the Courts, including the High Courts in India. Therefore, the judgment passed by the Apex Court in *Judges' Association case* is binding on this Court and in compliance thereto, respondent No. 2 has framed 2004 Rules accordingly. The said respondent even is following the Rules in the matter of recruitment to the H.P. Judicial Service comprising Civil Judges, Sr. Civil Judges and District/Addl. District & Sessions Judges on and w.e.f 20.3.2004. However, in the matter of recruitment to the cadre of District/Addl. District & Sessions Judges, "vacancy based roster" continued to be followed by way of an inadvertent mistake till 31.3.2010. When such mistake came to the notice of the said respondent, it has been rectified and on and w.e.f. 31.3.2010, the said respondent is following the "post based roster". In order to bring the quota meant for direct recruits as prescribed under the Rules at par the recruitment from this category was stopped and the posts

in existence as on 31.3.2010 have been filled up by way of promotion from amongst eligible Sr. Civil Judges/by way of accelerated promotion. Therefore, the loss on account of inadvertent mistake attributed to respondent No. 2 either caused to promotee or the eligible Sr. Civil Judges by way of accelerated promotion has now been made good. The direct recruits had also to suffer as their recruitment stopped till each category gets its quota.

14. Emphasisingly, the, contra therewith rather hence decision, rendered, by, the Hon'ble Apex Court, in, a, case titled, as, All India Judges' Association & Ors vs. Union of India, reported in (2002)4 SCC 247, hence prescribing, the, adoption, of, a "Post Based Roster", rather than, of a "Vacancy Based Roster", for, all relevant purposes, is, the perennial governing rule, for the contentious purpose, (a) whereas, the latter inappropriate mechanism becoming acquiesced, to become recoured, by, this Court, for assigning, the, inter se seniority amongst, the, contesting litigants concerned, thereupon, adoption(s) thereof, become wholly unvindicable. Moreover, with the verdict supra constituting, a, judgment in rem, also bolsters an inference, qua, it purveying, a recurring, and, continuous cause(s), of, action, vis-a-vis, all the aggrieved concerned, to, ensure qua, the, mechanism contemplated therein, hence, for the requisite purpose, becoming completely recoured, by, the High Court, (b) thereupon, upon, its evident acquiesced non-recoursing, and, also dehors, the earlier unsuccessful challenges, as, raised by the petitioners, through, the Judicial Officers' Association, rather not begetting against them any, estopping inference(s), of, waivers, acquiescence, and, abandonments, (c) nor also the hereat belated challenge, vis-a-vis, the gradation lists, wherein, theirs names occur below, the private respondents, would adversarially work against them, merely on anvil of vices, of, delay, and, laches, hence purportedly operating against them. Immense fortification, to, the afore view, is, garnered, from, a, decision of the Hon'ble Apex Court, rendered, in, a case titled as Fazlunbi vs. K. Khader Vali and another, reported in (1980)4 SCC 125, the relevant paragraphs No.7 to 10 whereof, stand extracted hereinafter:- "7. We need not labour the point because this Court has already interpreted Section 127(3)(b) in Bai Tahira and no judge in India, except a larger bench of the Supreme Court without a departure from judicial discipline can whittle down, wish away or be unbound by the ratio thereof. The language used is unmistakable, the logic at play is irresistible, the conclusion reached is inescapable, the application of the law as expounded there is an easy task. And yet, the Division Bench, if we may with respect say so, has, by the fine art of skirting the real reasoning laid down 'unlaw' in the face of the law in Bai Tahira which is hardly a service and surely a mischief, unintended by the Court may be, but embarrassing to the subordinate judiciary. 8. There is no warrant whatever for the High Court to reduce to a husk a decision of this Court by its doctrinal gloss. The learned judges observe, to our bafflementThe decision in Bai Tahira v. Ali Hussain Fassalli, (supra) is to be confined only to the facts of that case. It falls to be distinguished for the following reasons : (i) the compromise of 1962 referred to therein was

construed as not affecting the rights of a Muslim divorced wife in seeking to recover maintenance Under Section 125 Cr. P.C., (ii) what was considered to have been paid to the Muslim divorced wife was only the Mahar amount and not the maintenance amount payable for the Iddat period, (iii) The Mahar amount paid revealed a rate of interest which for a person residing in Bombay was held to be wholly inadequate to do duty for maintenance allowance, (iv) there was nothing in that case to show that the amount of Rs. 130/- paid towards Iddat represented the payment of a sufficient maintenance amount for the three months period of Iddat and (v) the husband in that case did not raise any plea based on Section 127(3)(b) Cr. P.C. 9. Let us quote a few passages from this Court's ruling in Bai Tahira (supra) to express the untenability of the excuse not to follow the binding ratio:

Nor can Section 127 rescue the respondent, from his obligation, payment of mehar money, as a customary discharge, is within the cognizance of that provision. But what was the amount of mehar ? Rs. 5000/-, interest from which could not keep the woman's body and soul together for a day, even in that city where 40% of the population are reported to live on pavements, unless she was ready to sell her body and give up her soul The point must be clearly understood that the scheme of the complex of provisions in Chapter IX has a social purpose. III-used wives and desperate divorcees shall not be driven to material and moral dereliction to seek sanctuary in the streets. This traumatic horror animates the amplitude of Section, 127. Where the husband, by customary payment at the time of divorce, has adequately provided for the divorce, a subsequent series of recurrent doles is contraindicated and the husband liberated. This is the teleological interpretation, the sociological decoding of the text of Section 127. The keynote though is adequacy of payment: which will take reasonable care of her maintenance.

The payment of illusory amounts by way of customary or personal law requirement will be considered in the reduction of maintenance rate but cannot annihilate the rate unless it is a reasonable substitute. The legal sanctity of the payment is certified by the fulfilment of the social obligation, not by a ritual exercise rooted in custom. No construction which leads to frustration of the statutory project can secure validation if the court is to pay true homage to the Constitution. The only just construction of the section is that Parliament intended divorcees should not derive a double benefit. If the payment by any mehar or ordained by custom has a reasonable relation to the object and is a capitalised substitute for the order Under Section 125 not mathematically but fairly-then Section 127(3)(b) subserves the goal and relieves the obliger, not pro tanto but wholly. The purpose of the payment 'under any customary or personal law' must be to obviate destitution of the divorcee and to provide her with wherewithal to maintain herself. The whole scheme of Section 127(3)(b) is manifestly to recognise the substitute maintenance arrangement by lump sum so paid and is potential as provision for maintenance to interpret otherwise is to stultify the project. Law is dynamic and its meaning cannot be pedantic but

purposeful. The proposition, therefore, is that no husband can claim Under Section 127(3) (b) absolution from his obligation Under Section 125 towards a divorced wife except on proof of payment of a sum stipulated by customary or personal law whose quantum is more or less sufficient to do duty for maintenance allowance. 9. Granville Williams in his "Learning the Law" (pp. 77-78) gives one of the reasons persuading judges to distinguish precedents is "that the earlier decision is altogether unpalatable to the court in the later case, so that the latter court wishes) to interpret it as narrowly as possible". The same learned author notes that some judges may "in extreme and unusual circumstances, be apt to seize on almost any factual difference between this previous case and the case before him in order to arrive at a different decision. Some precedents are continually left on the shelf in this way, as a wag observed, they become very "distinguished". The limit of the process is reached when a judge says that the precedent is an authority only "on its actual facts". We need hardly say that these devices are not permissible for the High Courts when decisions of the Supreme Court are cited before them not merely because of the jurisprudence of precedents, but because of the imperatives of Article 141." (i) wherein a trite principle of law stands expounded, vis-a-vis, verdicts rendered, by the Hon'ble Apex Court, being unamenable, for, being departed from, by the High Courts, hence, in tandem therewith, the, acquiesced departure(s), from, the verdict, of, the Hon'ble Apex Court rendered in All India Judges' Association & Ors vs. Union of India, reported in (2002)4 SCC 247, and, also from, the, in consonance therewith Rule 13, borne in the H.P. Judicial Rules, can neither be brooked nor can be countenanced, irrespective, of any purported delay, and, laches, arising from any belated challenges, being made by the writ petitioners, vis-a-vis, the gradation list(s) concerned, wherein, their names occur, below, the names, of, the private respondents.

45. In the matter of seniority, as per the settled legal principles, the seniority already settled cannot be unsettled even if a particular category has exceeded its quota. It has been held by the Apex Court in Hon'ble Punjab & Haryana High Court at Chandigarh vs. State of Punjab & ors., AIR 2018 SC 5284 that in case any category has exceeded its quota in the cadre and the appointment made as per the Rules, the promotees who have exceeded the quota neither have to be pushed down in the seniority nor their seniority has to be downgraded. However, the conduct of the petitioners and the other similarly situated officers in the cadre of District/Addl. District & Sessions Judges in not approaching the Court in accordance with law and pursuing their grievances in a manner to bring the same to logical end and rather withdrawn the claims they brought to this Court and also the Apex Court time and again without taking the same to its logical end lead to the only conclusion that they had acquiesced their claims and also these writ petitions having been filed in the year 2018 are definitely barred by delay and laches.

In support of such findings, support can also be drawn from the judgment of the Apex Court in Union of India & ors. vs. Tarsem Singh, (2008) 8 SCC 648.

The relevant text of the judgment reads as follow.

7. To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or re-fixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion etc., affecting others, delay would render the claim stale and doctrine of laches/ limitation will be applied. In so far as the consequential relief of recovery of arrears for a past period, the principles relating to recurring/successive wrongs will apply. As a consequence, High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition."

46. The ratio of the judgment of the Apex Court in *State of Himachal Pradesh & ors. vs. Rajesh Chander Sood* (2016) 10 SCC 77, is that in service matters, delay and laches or limitation may not thwart the claim so long as it may be, however, if such claim if allowed does not have any adverse repercussions on the settled third party rights. The present is a case where the seniority list of 2005 and also 2018 (Annexures P-2 & P-16, respectively) have been sought to be quashed. In case such relief is granted at such a belated stage, it will certainly amount to unsettle the seniority of the officers in the cadre settled long back which is not legally permissible. The arguments that S.C.Kainthla, petitioner in CWP No. 2061 of 2018 was inducted to the cadre in the year 2006 whereas Rajeev Bhardwaj in CWP No. 2292 of 2018 in the year 2009 and as such the cause of action accrued to them from the said date(s) is again without any help to the writ petitioners as they wake up from deep slumber for the first time only in the year 2014 when I.A. No. 334 of 2014 was filed in the Apex Court and thereafter when these writ petitions in the year 2018 in this Court.

47. In a case where the impugned seniority list was published at least 12 times was sought to be quashed, the apex Court in *V.Bhasker Rao & others vs. State of A.P. & ors.* (1993) 3 SCC 307 has held as under:

"10. Mr. Madava Reddy then contended that the petitioners were appointed in the years 1981 and since then till the year 1988 twelve seniority lists have been published showing the petitioners below respondents 4 to 16. At no point of time they challenged the seniority lists in the Court. Even when the writ petitions filed

by Chalapathi and others were pending they did not intervene before the High Court. The petitioners, according to Mr. Madava Reddy, are guilty of gross delay and laches and as such are not entitled to get relief by way of this petition under Article 32 of the Constitution of India.

11. We see considerable force in both the contentions raised by Mr. Madava Reddy. We are, however, of the view that it would be in the larger interest of the Service to dispose of this petition on merits."

In such circumstances, the petitioners were held not entitled to invoke Article 32 to claim seniority over the respondents.

51. The crux of the case law so cited, therefore, is that there should be no delay to challenge the seniority. The seniority fixed long ago should not be disturbed.

11. The acceptance, by, one of us (Hon'ble Mr. Justice Dharam Chand Chaudhary, J.), of, the submission addressed, by Mr. R.L. Sood, learned Senior Counsel, for, the private respondent, that, for want of further successful challenges, being made by the petitioners, vis-avis, the judgment recorded, upon, CWP No. 61 of 1999, (a) and, also the further acceptance, by one of us (Hon'ble Mr. Justice Dharam Chand Chaudhary, J.), of, a further submission addressed, by the afore counsel, (b) that, with the rejected representations made, in consequence thereto, also remaining unsuccessfully unchallenged, or remaining unchallenged, hence, by the petitioners, thereupon, they render themselves rather guilty of vices, of, delay and laches, and, also hence the concomitant stain, of, acquiescence(s), permeating the writ petition(s), (c) necessarily also cannot become countenanced, by, the undersigned, as, the afore verdict was made prior, to, the verdict recorded by the Hon'ble Apex Court, in, a case titled, as, All India Judges' Association & Ors vs. Union of India, reported in (2002)4 SCC 247, (i) and also was rendered prior to the consequent therewith hence drawn rather the apposite hereat validly hence operating Rule 13, rule whereof does extantly govern(s), and, regulate(s), the, determination(s), of, inter se seniority, of, various contemplated inductees, into, the, rank of Addl. District Judge(s)/District Judge(s), and, who become drawn, from, various streams or channels. Moreover, also when, any deviation from the afore, are, condoned upto 31.03.2003. (ii) Emphasisingly also, whereas, the afore verdict, and, consequent therewith drawn Rule 13, does reiteratedly constitute, the, solitary parameter, and, also the governing regimen, for, the contentious purpose. Moreover, any rejection(s), of, the apposite representations, as, made by the petitioner, hence, by the High Court, on its administrative side, also subsequent to the decision, rendered in All India Judges' Association & Ors vs. Union of India, reported in (2002)4 SCC 247, is also both an unworthy, and, also an inefficacious ground, for, effacing the binding, and, conclusive diktat, of, law, as, recorded by the Hon'ble Apex Court, in, the afore case, and, nor also can either blunt or reduce the vigour, of, the apposite Rule 13, as, has been incorporated, in, the H.P. Judicial Services Rules, hence, in pursuance to the decision, of, the Hon'ble Apex Court, as, rendered,

in, the afore case.

12. One of us (Hon'ble Mr. Justice D.C. Chaudhary, J.) has strenuously emphasised, upon, the factum qua with both the writ petitioners or one of them, in, contemporaneity, vis-a-vis, their induction into service, and, of, the private respondents, rather being not borne, in, the cadre of District Judge/Additional District Judge, hence, theirs being barred, to, at this stage, hence, stake any claim, for, theirs securing, a, rank in the seniority list, rather above the private respondents, (a) especially in contemporaneity, vis-a-vis, the, induction(s) into service, of, the private respondents. However, the afore submission is also unworthy, for acceptance, (b) as, the apt suitable aspirants, vis-a-vis, the contentious post of judicial officers, are those, who were to be legitimately drawn, from, the stream or feeder channel of Civil Judges (Senior Division), for, hence, their claim, for promotion thereto, being considered, at, the requisite phase, by the High Court, (c) whereas, when their valid induction thereinto, rather become acquiesced, to, be untenably substituted, by the private respondents, hence, in acquiesced detraction, and, also in transgression, of, the mandate, of, the Hon'ble Apex Court, as, rendered in a case titled as All India Judges' Association & Ors vs. Union of India, reported in (2002)4 SCC 247, and, besides also, obviously, upon, the afore alluded hence acquiesced breach of Rule 13, as, became promulgated, in consonance therewith, (d) whereas, they were necessarily available, for induction/promotion, to the post of District Judge/Additional District Judge, (e) and, who, as explicitly echoed, in, the report of the Hon'ble Judges Committee, rather were untenably declined, their right for being considered for promotion, vis-a-vis, the, apposite promotional post(s). Since the afore declinings, are not grooved, in any further reason, qua theirs being either unsuitable, for, promotion, to, the rank of District Judge/Additional District Judge, given theirs thereat facing proceedings, of, mis-conduct (f) or theirs being otherwise unsuitable or theirs not passing any prescribed suitability test, for, the relevant purpose nor when the High Court, in its reply, hence, projects any further reason, qua, hence, any dire exigencies, of, service or for any other scribed well reasoned circumstances, their non induction, to, the promotional post, of, District Judge/Additional District Judge, rather becoming necessitated, (g) thereupon, the non consideration, of the afore contemplated stream, of, valid inductees, as, Additional District Judge/District Judge, or their non consideration, for, promotion thereinto, is, wholly impermissible, and, also is arbitrary, (h) rather the seniority list, as, drawn by the Hon'ble Judges Committee, hence, in consonance with the expostulation of law, declared in All India Judges' Association & Ors vs. Union of India, reported in (2002)4 SCC 247, and also in consonance with Rule 13, as, became drawn in concurrence therewith, is enjoined to be revered. (I) Preeminently also for, the preeminent factum, qua, hence only thereupon, the dilution, of, the, apposite Rule hence extantly governing, the, contentious inter se seniority, of, the writ petitioners, and, of the private respondents, and, encapsulating, the, trite canon, vis-a-vis, throughouts rather rigorous adoption(s), by the High Court(s), rather for, the

afore requisite purpose, hence the, norm of "Post Based Roster", than, the acquiesced invalidly adopted norm, inasmuch, as, " Vacancy Based Roster" by the High Courts, hence, would become aptly precluded.

13. On anvil of the H.P. Judicial Officers' Association, rather unconditionally, withdrawing on 4.11.2016, CWP No.696 of 2010, as also, with Writ Petition(C) No.532 of 2009 becoming withdrawn, on 18.03.2010, despite, an order being recorded, on, 14.7.2016, by the Hon'ble Apex Court, as, embodied in Annexure R-3/F, that, the parties be relegated, to, work out their remedy, in, the said writ petition, and, also, to, await the outcome, of, the said writ petition, (i) thereupon, also, on anvil of the writ petitioners herein, not joining, in the array of petitioner, hence all the aggrieved officers concerned, who had become earlier arrayed, through, the H.P. Judicial Officers' Association, in, the afore CWPs, rather instituted by the latter, and, CWPS whereof, stood unconditionally withdrawn, hence, Hon'ble Mr. Justice Dharam Chand Chaudhary, J., has concluded, (a) that, with purportedly similarly situate, and, identically aggrieved, visa-vis, the, petitioners herein hence, accepting the drawing, of, the gradation list(s) concerned, (b) thereupon, it begetting the apt corollary, visa-vis, the afore visible acquiescence, as, arose, from, the petitioners omitting to, hence join them, along with them, in, the extant petition(s), (c) also making operational, the, estopping principles, of, waivers, and, abandonments, against, the writ petitioners, and, the latters being concomitantly balked, to, reagitate a controversy, rather acquiesced, by the H.P. Judicial Officers' Association, as evident, from, the H.P. Judicial Officers' Association, unconditionally withdrawing CWP No. 696 of 2010, to be finally, and, conclusively, hence earlier rested. However, the, effects, of, the afore estopping inference(s), of, acquiescence or waivers, and, abandonments, as, hence become drawn, by one of us (Hon'ble Mr. Justice Dharam Chand Chaudhary, J.), does also rather hence become emaciated, vis-a-vis, its vigour, (d) inasmuch as, the verdict of the Hon'ble Apex Court, as, rendered in a case titled, as, All India Judges' Association & Ors vs. Union of India, reported in (2002)4 SCC 247, is, a judgment in rem, hence within, the, domain, of, the trite postulations, as, are borne, in, relevant paragraphs No. 21 to 23, of, a decision of the Hon'ble Apex Court rendered, in, a case titled, as, State of Uttar Pradesh and others vs. Arvind Kumar Sribastava and others, reported in (2015)1 SSC, the, afore relevant paragraphs whereof, read as under:- "21. Holding that the respondents had also acquiesced in accepting the retirements, the appeal of U.P. Jal Nigam was allowed with the following reasons(Jaswant Singh Case,(2006) 11 SCC 464): "13. In view of the statement of law as summarised above, the respondents are guilty since the respondents have acquiesced in accepting the retirement and did not challenge the same in time. If they would have been vigilant enough, they could have filed writ petitions as others did in the matter. Therefore, whenever it appears that the claimants lost time or whiled it away and did not rise to the occasion in time for filing the writ petitions, then in such cases, the court should be very slow in granting the relief to the incumbent.

Secondly, it has also to be taken into consideration the question of acquiescence or waiver on the part of the incumbent whether other parties are going to be prejudiced if the relief is granted. In the present case, if the respondents would have challenged their retirement being violative of the provisions of the Act, perhaps the Nigam could have taken appropriate steps to raise funds so as to meet the liability but by not asserting their rights the respondents have allowed time to pass and after a lapse of couple of years, they have filed writ petitions claiming the benefit for two years. That will definitely require the Nigam to raise funds which is going to have serious financial repercussions on the financial management of the Nigam. Why should the court come to the rescue of such persons when they themselves are guilty of waiver and acquiescence?" 22. The legal principles which emerge from the reading of the aforesaid judgments, cited both by the appellants as well as the respondents, can be summed up as under:

22.1 Normal rule is that when a particular set of employees is given relief by the Court, all other identically situated persons need to be treated alike by extending that benefit. Not doing so would amount to discrimination and would be violative of Article 14 of the Constitution of India. This principle needs to be applied in service matters more emphatically as the service jurisprudence evolved by this Court from time to time postulates that all similarly situated persons should be treated similarly. Therefore, the normal rule would be that merely because other similarly situated persons did not approach the Court earlier, they are not to be treated differently. 22.2. However, this principle is subject to well recognized exceptions in the form of laches and delays as well as acquiescence. Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence-sitters and laches and delays, and/or the acquiescence, would be a valid ground to dismiss their claim. 22.3 However, this exception may not apply in those cases where the judgment pronounced by the Court was judgment in rem with intention to give benefit to all similarly situated persons, whether they approached the Court or not. With such a pronouncement the obligation is cast upon the authorities to itself extend the benefit thereof to all similarly situated person. Such a situation can occur when the subject matter of the decision touches upon the policy matters, like scheme of regularisation and the like (see K.C. Sharma & Ors. v. Union of India (supra)). On the other hand, if the judgment of the Court was in personam holding that benefit of the said judgment shall accrue to the parties before the Court and such an intention is stated expressly in the judgment or it can be impliedly found out from the tenor and language of the judgment, those who want to get the benefit of the said judgment extended to them shall have to satisfy that their petition does not suffer from either laches and delays or acquiescence. 23. Viewed from this angle, in the present case, we find that the selection process took place in the year 1986. Appointment orders were issued

in the year 1987, but were also cancelled vide orders dated June 22, 1987. The respondents before us did not challenge these cancellation orders till the year 1996, i.e. for a period of 9 years. It means that they had accepted the cancellation of their appointments. They woke up in the year 1996 only after finding that some other persons whose appointment orders were also cancelled got the relief. By that time, nine years had passed. The earlier judgment had granted the relief to the parties before the Court. It would also be pertinent to highlight that these respondents have not joined the service nor working like the employees who succeeded in earlier case before the Tribunal. As of today, 27 years have passed after the issuance of cancellation orders. Therefore, not only there was unexplained delay and laches in filing the claim petition after period of 9 years, it would be totally unjust to direct the appointment to give them the appointment as of today, i.e. after a period of 27 years when most of these respondents would be almost 50 years of age or above." wherein, a, candid expostulation of law occurs, vis-a-vis, (i) that upon, a, particular set of employees, being, accorded relief, by the court concerned, thereupon, all other identically, and, similarly situated therewith persons, also becoming enjoined to be treated alike therewith, rather through, theirs being extended similar benefits; (ii) as otherwise it would tantamount, to, discrimination, and, would be violative of Article 14, of, the Constitution of India. Though, delay and laches or acquiescences hence bar the slumbering litigants, to, raise claim(s), earlier reared and granted, vis-a-vis, the peers concerned, who rather successfully agitated them through courts, yet an exception thereto, is, also carved therein inasmuch, as qua, upon, any judgment pronounced by courts of law, being, a, judgment in rem, hence, with an intention, to, give benefit to all, (iii) thereupon, the estopping inference(s), of, delay and laches or of acquiescence, rather not working against other purportedly identical, and, similarly situated persons, hence, along with their apposite peers, and, who subsequently claim an alike relief, vis-a-vis, the ones granted earlier qua their peers, preeminently rather the afore estopping vices becoming denuded, vis-a-vis, their vigour, and, force. Necessarily hence the fulcrum, of, the reasoning, assigned by one of us (Hon'ble Mr. Justice Dharam Chand Chaudhary, J.) while concurring, with an alike therewith inference, as, became earlier drawn, by the learned Single Judge of this Court, qua, with the, purported immense procrastinated delay hereat, and, also with an immense hiatus elapsing, in, theirs challenging, the, purportedly settled gradation lists, as, became much earlier thereto hence drawn, hence, naturally attracting against the petitioners, the, estopping vices, of, delay, laches, and, acquiesces (a) and, therealongwith reiteratedly also the afore immediately prior hereto alluded, conclusion, as, drawn, by one of us (Hon'ble Mr. Justice Dharam Chand Chaurdhary, J.), rather becomes completely unhinged, (b) conspicuously, given, the verdict rendered by the Hon'ble Apex Court, in, a case titled as All India Judges' Association & Ors vs. Union of India, reported in (2002)4 SCC 247, hence, for the reasons aforestated, holding a perennial immense inviolable legal command, and, clout, (c) and, also the rules drawn in consonance therewith also enjoying, an, alike perennial command,

and, fiat, (d) and, when an acquiesced breach thereof, by, H.P. High Court, is, evident, upon, the afore allusion, as, made to the afore report of the Hon'ble Judges Committee, as, drawn, in, the year 2010, (e) wherein, the rigor, of, the afore imperative judicial diktat, and, also of the apposite therewith rules, hence, being infringed, is, openly echoed, (f) thereupon, necessarily hence apart, from, the judgment (supra) rendered by the Hon'ble Apex Court, becoming a judgment in rem, rather also makes it amenable, to be cast, in a legal mold, rendering, it hence, to, become amenable, to, a, construction qua it throughout(s) imposing, an, exacting legal

obligation, upon, the High Court, to, ensure the meteings, of, the completest deference thereto. Obviously, the afore valid perennial diktat, has been acquiesced, to, become breached. Moreover when the direction(s) rendered, by, the Hon'ble Apex Court, in, I.A. No.17 of 2011 in IA No.244 of 2009 and IA Nos. 1 & 2 in IA Nos. 17/2011 in IA No. 244/2009, and IANo.334/2014, IA Nos. 335, 336, 337, 338/2015 and IA No. 339 & 341/2016 in Writ Petition (Civil) No. 1022/1989, on 28.4.2016, as, aforestated, has also become revered, by the Hon'ble Two Judges' Committee, of, this Court, besides when the report, of, the Committee, is, drawn in consonance, with, the apt relevant Rule 13, thereupon, no irreverence thereto, can be brooked. Reiteratedly, thereat alone i.e. in the year 2016, hence, the contentious dispute, has been given, a, complete quietus, and, not earlier, hence thereupon, also all the afore verdicts, are inapplicable hereat. Even though, one of us (Hon'ble Mr. Justice Dharam Chand Chaudhary) has alluded, to, the recorded minutes, as, made by the Full Court, in its meeting held in the year 2017, wherethrough, the report Annexure P-12, became disapprobated, on anvil, of, a Judgement, of, the Hon'ble Apex Court, rendered, in, a case titled as Direct Recruit Class II Engineering Officers' Association vs. State of Maharashtra and others, reported in (1990)2 SCC 715. However, the afore drawn minutes, by the Full Court, wherethrough, it declined to accept Annexure P12, also cannot weigh, with this Court, as, they are anchored, upon, a verdict, of, the Hon'ble Apex Court rendered, in , Direct Recruit Class II Engineering Officers' Association's case (supra), verdict whereof, for the reasons assigned hereinabove, is, grossly in applicable, vis-a-vis, the factual matrix prevailing hereat

15. One of us (Hon'ble Mr. Justice Dharam Chand Chaudhary, J.) has also expressed, a, view, that, since subsequent to 2010, the, stream or feeder category of Civil Judges (Senior Division), became compensated rather for earlier purported errors or departures, from, the verdict, of, the Hon'ble Apex Court rendered in a case titled as All India Judges' Association & Ors vs. Union of India, reported in (2002)4 SCC 247, and, also from the consonant therewith incorporated Rule 13, (i) inasmuch, as their services became regularised, from their hitherto adhoc basis service(s), as, Presiding Officer, Fast Track Court, hence, into/as, Addl. District Judges/District Judges, (ii) whereupon, with the afore candid wrong(s) or error(s), if any, arising from depatures, if any, from, the verdict of the Hon'ble Apex Court in case supra, becoming undone, (iii)

thereupon, the writ petitioners rather not holding any valid surviving, and, subsisting grievance, and, the verdict recorded, by, the learned Single Judge, being, well merited, and, warranting vindication. However, for fathoming, the, vigour, of, the afore view expressed, by, one, of, us (Hon'ble Mr. Justice Dharam Chand Chaudhary), the undersigned, had, elicited the records appertaining, to the induction into service, of, Judicial Officers or those who become drawn from the stream, of, Civil Judges (Senior Division), (iv) and, has noticed, that, two Fast Track Courts, hence, on an adhoc basis, had come to be created in the year 2003, (v) and, also, a, notification in the afore regard was issued, on, 16.08.2003/6.8.2003, (vi) and, thereafter, through, the recorded minutes of the Full Court, held, on, 29.8.2003, certain judicial officers, holding the rank of the Civil Judge (Senior Division), were, appointed, as, Presiding Officer(s) (Fast Track Court), hence, on, an adhoc basis. However subsequently, through, a notification issued, by the Government of Himachal Pradesh, on 30th March, 2013, wherethrough, the hitherto adhoc Fast Track Courts, became converted into permanent courts, of, Additional District and Sessions Judges, (vii) hence, in pursuance thereto, through, the, recorded minutes of the Hon'ble Judges Committee, the, hitherto adhoc services, of, the judicial officers, as, became drawn, from, the stream or channel, of, Civil Judges (Senior Divisions), hence were declared to be regularised, as, District Judges/Additional District Judges. However, since 2003 upto 2013, all the afore judicial officers, as, become drawn, from, the stream/channel of Civil Judges (Senior Division), rather become continued to be reflected, as holding, the, posts concerned, merely on an adhoc basis, (viii) and, conspicuously since 2003, and, upto 2013, all, the afore adhoc posts of Presiding Officers, of, Fast Track Courts, were not en-cadred post(s), rather throughout, the afore period, hence, were ex-cadred post(s). Hence, the, sequel thereof, is, that, a, 34 point roster, was applicable, hence, with all its absolutest clout, and, command, (ix) only vis-a-vis, the en-cadred posts of Additional District Judge(s)/District Judge(s), and, not visa-vis, the apposite ex-cadred posts, (x) besides, the, further corollary thereof, is, qua when in commensuration, with, the, canonised 34 point roster, hence, operative upto 2013, whereat the hitherto afore ex-cadred posts, were en-cadred , rather thereupto, only the, co-equal thereto hence en-cadred posts, became available, for, operating thereons rather the commensurate thereto, number(s), of, roster points, for, therethroughs, hence, determining, the validities, of, all the apposite contentious inductions, conspicuously at the apposite disputed phase(s), and, also for, concomitantly reckoning, the, contentious inter se seniority. In other words, the, operation, of, the 34 point roster, does solitarily, vis-a-vis, the compatible therewith encadred posts, rather becomes, the, governing or the apposite regulating parameter. Consequently, only after the encadrement hence after 2013, the hitherto adhoc posts, of, Presiding Officer, Fast Track Courts, into, permanent posts, of Additional District and Sessions Judges, the working, of, a 34 point roster, would halt, and, not earlier, (xi) conspicuously nor when the apposite regularizations were not given any retrospective effects, nor also when any concomitant restrospectively operating additions, vis-a-vis, the roster

point(s), were hence made through validly made rule(s). Necessarily, upon, increase, in, the strength, of, the apposite cadre hence after 2013, also, the requisite rules, hence, require/required, an, amendment, if, not already made. 16. Moreover, "the effect of the acquiescence", as, made by the Hon'ble Judges Committee, in the report drawn, in the year 2010, also has the necessary sequeling effect, especially, and, inasmuch, as, despite, the officers, hence manning the temporary Fast Track Courts, merely, on an adhoc basis, rather since 2004, and, upto 2010, and also despite, the afore ex-cadre posts, being donned, by the officers drawn, from, the, stream, of, Civil Judges (Senior Division), yet the Hon'ble Judges Committee, rather propounding, a, candid view that there still exist breaches or departures, from, the verdict of the Hon'ble Apex Court rendered, in, a case titled, as, All India Judges' Association & Ors vs. Union of India, reported in (2002)4 SCC 247, (a) "is, qua hence," the High Court, acquiescing, to, the operation, of, a 34 point roster, vis-a-vis, the apposite encadred posts, and, not qua ex-cadre posts. Reiteratedly, the afore acquiescence also obviously estops, the, High Court, to, contend qua the afore adhoc posts, existing prior to 2013, becoming unamenable or baulking the play(s), of, a 34 point roster vis-a-vis, the thereupto i.e. from 31.3.2003 upto 2013, hence, the co-equal thereto rather en-cadred posts. Emphasisingly, hence, also the afore expressed view, by one, of, us(Hon'ble Mr. Justice Dharam Chand Chaudhary, J.) becomes benumbed, and, also become blunted, vis-a-vis, its vigour, if any, and, nor it can be befittingly concluded, that, the afore purported compensatory measures, hence, mitigate the grievance(s), of, the writ petitioners. 17. Nowat, the preeminent reason which prevail(s), upon, the undersigned to validate, the, report, of, Hon'ble Judges Committee, report borne in Annexure P-12, is, grooved in (a) the verdict of the Hon'ble Apex Court rendered in a case titled, as, All India Judges' Association & Ors vs. Union of India, reported in (2002)4 SCC 247, holding perennial force, and, applicability, and, also, its purveying a continuous, and, also, a, repeated cause, of, action to the aggrieved concerned. (b) the perennality, of, the verdict, of, the Hon'ble Apex Court, as, rendered in the afore case, necessarily can not be deemed, to, ever slumber or become redundant, and, nor also any purported, slumbering(s), and, acquiescences, or delays and laches, if any, on the part, of, the writ petitioners, also cannot concomitantly, render halted, the, ever awakened or never slumbering, rather, the absolutest command, and, diktat of the expostulation, of, law, as, pronounced, in, the verdict rendered by the Hon'ble Apex Court, in, a case titled as All India Judges' Association & Ors vs. Union of India, reported in (2002)4 SCC 247. Moreso, when it has become acquiesced, by, the afore alluded report, of, Hon'ble Judges' Committee, to be untenably departed from.

52. No doubt in the case in hand, the subordinate Judicial Officers, including the member of the then H.P. Higher Judicial Service raked up the issue of excess quota of direct category candidates in the Higher Judicial Service and inter se seniority, however, either unsuccessfully or without taking such dispute to its

logical end. In a case titled *Rabindranath Bose & ors. vs. The Union of India & ors.*, (1970) 1 SCC 84, where the dispute of seniority was brought to Court after about 15 years, it has been held by the Apex Court that petitioners are not entitled to the relief sought without there being any reasonable explanation as to why they approached the Court after such an inordinate delay

60. On behalf of respondent No. 2 and on behalf of the petitioners also, reliance has been placed on the judgment of the Apex court in *Punjab & Haryana High Court vs. State of Punjab*, 2018 SCC Online SC 1728. In this case, the direct recruits and superior Judicial Officers of Punjab Judicial Service had assailed the seniority list dated 24.12.2015 by filing different set of writ petitions in the High Court of Punjab and Haryana in the year 2016. The writ petitions were filed and the impugned seniority list dated 24.12.2015 was set aside with the observation that promotion of officers under Rule 7(3) (a) (regular promotion) under 2007 Punjab Rules made beyond the quota was held as *ad hoc* and the promotees also not held entitled to get benefit of that service for the purpose of seniority and rather they were ordered to be placed at the bottom of the seniority after direct recruitment. Similarly, the direct recruits were also not held entitled for being considered as members of the cadre from the date of their recommendation by the High Court to the State for appointment and as a result thereof their seniority was ordered to be recast.

61. Aggrieved by the judgment passed by the Division Bench of Punjab and Haryana High Court, Civil Appeal Nos. 5518-23 of 2017 came to be filed in the Apex Court. The Apex Court has held as under:

70. In view of the foregoing discussion, we come to the following conclusions:

- 1) Promotion of fifteen officers under Rule 7(3)(a) cannot be held beyond their quota.
- 2) The promotion of fifteen officers cannot be said to be *ad hoc* nor they can be directed to be put at the bottom of the seniority list.
- 3) The High Court even though accepted the principle that roster is applicable in the seniority but in the operative portion of the judgment in paragraph 208 did not issue any direction to recast the seniority as per the roster given in the Appendix-- B which is an apparent error committed by the High Court.
- 4) Rule 2007 having been brought in place to give effect to the judgment of this Court in *All India Judges association case*, (2002) 4 SCC 247, while interpreting the Rules 2007 the direction issued by this court have to be kept in mind and rules cannot be interpreted in a manner so as to violate the directions issued by this Court in the above judgment.
- 5) Rule 7(4) read with Appendix-B has to be read in the light of direction of this Court in *All India's case* and harmonious construction of the rule clearly indicates that roster which has been expressly made applicable for filling the post of all the three streams shall be applicable while determining the seniority."

And granted the following reliefs:

71. In view of foregoing discussion, the seniority list dated 24.12.2015 is to be set aside. After setting aside the seniority list, two courses are open. Firstly, to remit this matter to the High Court again to recast the seniority list as per our direction and secondly, to finalize seniority list in this judgment itself. We choose to adopt the second course for two reasons:

a) Already period of three years has elapsed when the tentative seniority list was published. Finalization of seniority as early as possible is essential and necessary for administration of justice.

b) There is no dispute regarding inter se - seniority of the promotees under Rule 7(3) (a) and issue pertaining to inter se seniority of out of turn promotees and direct recruits have already been finalized by us. Only exercise which is to be undertaken is to place officers of three streams in accordance with the roster as indicated in Appendix B. After placing the officers of three streams, the seniority position as per roster comes as follows:....."

62. It is thus seen from the conclusion drawn by the Apex Court that 15 officers promoted under Rule 7(3)(a) were not held to be promoted beyond their quota and rather as per rules and neither their promotion was held to be ad hoc nor they were required to be placed at the bottom of the seniority list.

63. On the ratio of this judgment, Mr. K.D.Sood, learned Sr. Advocate has argued that the recruitment made prior to 31.3.2010 being under the Rules need no interference nor the direct recruits to be pushed down and assigned the seniority below the petitioners. However, to place reliance on this judgment would amount to touch the merits which in the case in hand cannot be done in view of the findings hereinabove that the claim of the petitioners is stale and the writ petitions are barred by the principle of delay and laches. Otherwise also, in the judgment (supra), the seniority list of 4.12.2015 was challenged without any delay i.e. in the year 2016 whereas in the case in hand all the seniority lists w.e.f. 2005 onwards till 2018 have been sought to be quashed. The relief so sought in view of the findings hereinabove is, therefore, highly time barred.

64. Not only this, the private respondents in the case in hand have been selected and appointed to the cadre consequent upon the posts advertised by respondent No. 2 and the selection process in accordance with the Rules followed. They have been selected on the basis of their merit long back i.e. respondent No. 3 on 18.5.2004 and respondent No. 4 on 17.12.2006. The said respondents being not at any fault can neither be pushed down nor the seniority can be assigned to them below the petitioners, at this belated stage, that too when the petitioners opted for not challenging their selection and appointment during all these years. The judgment of the Apex court in *Ajit Singh & others (II) vs. State of Punjab & ors.* (1999) 7 SCC 209 & *Maharashtra Vikrikar Karamchari Sangathan vs. State of Maharashtra & another* (2000) 2 SCC 552 cited on behalf of petitioners are not applicable for the reason that ratio thereof

would have been of some help to the case of the petitioners on merits. The claim of the petitioners, however, herein has been rejected being barred by delay and laches and they having acquiesced their claims as is apparent from the acts and deeds attributed to them and their conduct. There cannot be any quarrel to the law laid down by the Apex Court in *Dwarikesh Sugar Industries Ltd. Vs. Prem Heavy Engineering Works (P) Ltd.* And another, (1997) 6 SCC 450. In terms of the law laid down by the Apex court in *Judges' Association case*, "post based roster" in the matter of recruitment to the cadre of District/Addl. District & Sessions Judges was required to be followed after the Rules framed in the year 2004. Respondent No. 2 has started following "post based roster" on and w.e.f. 31.3.2010, as discussed in detail hereinabove. Therefore, there may be delay which as per the discussion hereinabove is on account of respondent No. 2 was inadvertently following the "vacancy based roster". The writ petitioners, however, failed to explain their conduct in not agitating the matter if not from an early date at least immediately on their induction to the service in the cadre of District/Addl. District & Sessions Judges. The interim application I.A. No. 334 of 2014 in which they were also applicants was ultimately declined to be entertained by the Apex court and accordingly disposed of. Therefore, any order passed during the pendency of the application ceases to exist on its dismissal by the Apex Court.

66. In view of what has been said hereinabove, it is held that the petitioners have laid stale claims in the writ petitions which certainly are barred by delay and laches. Therefore, allowing the writ petitions would certainly amount to unsettle the seniority position long back. The seniority lists w.e.f. 2005 onwards cannot also be quashed at this stage. Learned Single Judge, therefore, has not committed any illegality or irregularity while arriving at a conclusion that the claims laid by the petitioners in the writ petition being stale and also barred by delay and laches and also time barred cannot be accepted nor the settled seniority position can be unsettled at this belated stage

67. The present is rather a case where the petitioners on account of their acts, deeds and conduct as well as acquiescences are not entitled to the relief sought in the writ petition. Learned Single Judge has also rightly held that the writ petitions are bad on account of clubbing of multiple causes of action for the reason that when no relief has been claimed against respondents No. 5 & 6 who were appointed to the cadre on 27.9.2007 and 23.10.2009, respectively, their inclusion in the writ petitions is obviously for an oblique purpose and extraneous consideration to show that the writ petitions have been filed within a reasonable time. It is, however, not so for the reasons in detail recorded hereinabove

18. Much emphasis has been laid, upon, the factum, that, with the purported breaking down, of, the relevant, norm, of "Post Based Roster" by the High Court, for, determining, the inter se seniority, of, the inductees, into service, as, District Judge/Additional District Judge, and, who became drawn, from, the contemplated streams/channels, and, in the per centum contemplated therein,

rather becoming condoned, (a) hence, in, compliance, vis-a-vis, the verdict, of, the Hon'ble Apex Court, as, become cited in the report made, by, the Hon'ble Judges', in their meeting convened, in, the year 2016, minutes whereof also became placed, before the Hon'ble Apex Court. The further argument, which, has been strived to be erected thereon, is, hence the High Court, rather concomitantly, accepting, the, validity of the application hereat, of, the verdict supra, of, the Hon'ble Apex Court, in its, meeting held, in, the year 2016. Furthermore, it is also canvassed, that, in consonance therewith, there cannot, yet, be any adoption, of, the principle of "pushing down". However, even the afore submission, apart from, the hitherto assigned reason, does, further falter and also stagger(s), (i) as, the apt expostulated therewithin hence special circumstance(s), for, hence, validating, the, departing(s) therefrom, remain unpropounded, in the reply furnished, to, the writ petition, by the High Court, (ii) besides, the, stark factum that in case the High Court, had deemed it fit, to, mete, the, completest condoning compliance(s) thereto, or to derive, the fullest vigour therefrom, (iii) thereupon, it became both imperative and incumbent, upon, the High Court, to apart, from, purveying, the afore drawn apposite minutes, before the Hon'ble Apex Court, to also ensure, that, submission(s) inconsonance therewith, besides also a concurrent therewith order hence occurred, in, the order(s) rendered, on, 28.4.2016, by the Apex Court, upon, I.A. No.17 of 2011 in IA No.244 of 2009, and, IA Nos. 1 & 2 in IA Nos. 17/2011 in IA NO. 244/2009, and, IA No.334/2014, IA Nos. 335, 336, 337, 338/2015, and, IA No. 339 & 341/2016 instituted in Writ Petition (Civil) No. 1022/1989 or in the subsequent thereto proceedings embarked, upon, by the Hon'ble Apex Court. However, neither the afore submission exists, in, the order rendered by the Hon'ble Apex Court, nor any condonation or validation, of, the afore submission(s), is, echoed therein, nor in any other order(s) rendered, by, the Hon'ble Apex Court, (a) rather with the Hon'ble Apex Court, making an order, upon, the High Court, to, retrospectively adopt, the, 34 point roster, hence, with its absolutest vigour, rather from 31.3.2003, does bringforth, a, conclusion, that, the doctrine of "pushing down", has become countenanced, by the Hon'ble Apex Court, and, also hence, a further inference, is, drawable qua breaches, if any, vis-a-vis, the vindicable adoptable norms, of, a "Post based Roster", are, uncondonable, as any condonation thereof, would beget breaches, of, the inflexible mandate, of, Hon'ble Apex Court, as, rendered in a case titled as All India Judges' Association & Ors vs. Union of India, reported in (2002)4 SCC 247, and, also, vis-a-vis, the afore orders pronounced, in the afore I.As. The afore conclusion gathers strength, from, the striking factum qua rather the afore orders, as, made, upon, the afore I.As, being not strived to be reviewed, upon, anvil, of, the citations, relied, upon, by the Hon'ble Full Court, in, its minutes, hence, drawn, in the year 2016, (a) whereupon, it becomes necessary to conclude, vis-a-vis, the High Court abandoning, the afore ground, and, also its accepting, the afore diktat, as carried, in the orders made in the afore I.As , orders whereof became complied with, by the Hon'ble Judges Committee. Paramountly, also the rule or norm, as, propounded, in the minutes, of, the

meeting of the Full Court, held in the year 2016, is, applicable only, vis-a-vis, statutory rules, however, it is not applicable, vis-a-vis, the hereat finally, conclusively or completely enforceable verdict, as, became rendered by the Hon'ble Apex Court, in, All India Judges' Association & Ors vs. Union of India, reported in (2002)4 SCC 247, nor is applicable, vis-a-vis, the order rendered, on, 28.4.2016, by, the, Apex Court, upon, I.A. No.17 of 2011, in, IA No.244 of 2009, and, IA Nos. 1 & 2, in, IA Nos. 17/2011, in, IA NO. 244/2009, and, IA No.334/2014, IA Nos. 335, 336, 337, 338/2015 and IA No. 339 & 341/2016, instituted, in Writ Petition (Civil) No. 1022/1989, as, thereupon the law declared, by, the Hon'ble Apex Court, would become untenably breached. Contrarily, the afore condonatory reliances anvilled, upon, the verdict supra are deemed, to be waived or abandoned, with, a concomitant estoppel qua therewith hence working against the High Court. Paramountly, for, all afore reasons, all the afore strived condonations, of, all the afore acquiesced departures, is, also deemed, to, be not accepted, by, the Hon'ble Apex Court

67. The present is rather a case where the petitioners on account of their acts, deeds and conduct as well as acquiescences are not entitled to the relief sought in the writ petition. Learned Single Judge has also rightly held that the writ petitions are bad on account of clubbing of multiple causes of action for the reason that when no relief has been claimed against respondents No. 5 & 6 who were appointed to the cadre on 27.9.2007 and 23.10.2009, respectively, their inclusion in the writ petitions is obviously for an oblique purpose and extraneous consideration to show that the writ petitions have been filed within a reasonable time. It is, however, not so for the reasons in detail recorded hereinabove.

POINTS OF DIFFERENCE:

60. The judgment authored by Hon'ble Mr. Justice Dharam Chand Chaudhary is that the petitioners, on account of their acts, deeds, and conduct as well as acquiescences, are not entitled to the relief sought in the writ petition. To the contrary, the judgment authored by Hon'ble Mr. Justice Sureshwar Thakur on this point is that Annexure P-12, the report of Hon'ble Judges Committee, is grooved in

(a) the verdict of the Hon'ble Apex Court rendered in a case titled, as, All India Judges' Association & Ors vs. Union of India, reported in (2002)4 SCC 247, holding perennial force, and, applicability, and, also, it's purveying a continuous, and, also, a, repeated cause, of, action to the aggrieved concerned. (b) the perennality, of, the verdict, of, the Hon'ble Apex Court, as, rendered in the afore case, necessarily can not be deemed, to, ever slumber or become redundant, and, nor also any purported, slumbering(s), and, acquiescences, or delays and laches, if any, on the part, of, the writ petitioners, also cannot concomitantly, render halted, the, ever awakened or never slumbering, rather, the absolutest command, and, the diktat of the expostulation, of, law, as, pronounced, in, the verdict rendered by the Hon'ble Apex Court, in, a case titled as All India Judges' Association & Ors vs. Union of India, reported in (2002)4 SCC 247. Moreso, when

it has become acquiesced, by, the afore alluded report, of, Hon'ble Judges' Committee, to be untenably departed from.

61. Hon'ble Justice Dharam Chand Chaudhary clarified that although the Division Bench could also hear the matter on merits, yet the Respondents' counsel confined their submissions on preliminary objections. The Court draws such inference from Para 8 of the Judgement authored by his Lordship, which is reproduced as follows,

"(8). As pointed out at the very outset, since both the writ petitions have been dismissed on the grounds of delay and laches, acquiescences and also bad on account of clubbing of various causes of action, therefore, the arguments heard only qua this part of the case as learned Single Judge has not touched the merits of the case and in case the findings recorded by learned Single Judge are not ultimately found to be legally and factually sustainable on analyzing the arguments to be addressed by the parties on both sides, we may proceed further to hear this matter on merits also because the Apex Court in *Roma Sonkar vs. Madhya Pradesh State Public Service Commission & anr.*, Civil Appeal Nos. 7400-7401/2018, decided on 31.7.2018 has deprecated the practice of remanding of case to Single Judge while holding that the Single Judge is not subordinate to the Division Bench. Also that the Division Bench in Letters Patent Appeal if sets aside the judgment of the Single Judge should not remand the same to learned Single Judge and rather decide on merits itself. Mr. R.L.Sood, learned Sr. Advocate has, however, addressed the arguments in support of the remaining undecided preliminary objections also as permission to do so was granted by vide order dated 9.8.2019 passed in CMP No. 7630 of 2019 and CMP No. 7632 of 2019 filed in these appeals." On the contrary, the judgment pronounced by Hon'ble Justice Sureshwar Thakur is silent to the aspect of whether any arguments were addressed and heard on merits but has decided the case also on merits. Such inference is apparent from Para 19 of the judgment authored by his Lordship, which reads as follows, "For the reasons assigned hereinabove, both the LPAs are allowed, and, the judgment of the learned Single Judge, is, set aside. Consequently, the respondent concerned is directed to follow, the, post based roster w.e.f. 31.3.2003, for, preparing the seniority list, in accordance, with, the report of the Hon'ble Judges Committee, prepared, in the month of September, 2018 hence in accordance with the mandate, of, the Hon'ble Apex Court, rendered, in, a case titled as *All India Judges' Association & Ors vs. Union of India*, reported in (2002)4 SCC 247. However, it is clarified, that, induction into service from the category, of, legal practitioners prior to 31st March, 2003, shall remain unaffected, by, the report of the Hon'ble Judges' committee."

62. After an analysis of the dissenting opinions, I go ahead and state the following points of difference:

a) Whether the High Court can ignore the directions of Hon'ble Supreme Court passed in *All India Judges' Association & Ors. v. Union of India*, (2002) 4 SCC

247, merely on the principles of delay, latches, and acquiescence?

b) Whether, similar to the judgment authored by Hon'ble Justice Sureshwar Thakur, following the principles of remand laid down in *Roma Sonkar v. Madhya Pradesh State Public Service Commission and another*, Civil Appeal Nos. 7400-7401/2018, decided on 31.7.2018, the judgment authored by Hon'ble Justice Dharam Chand Chaudhary was also a decision on the merits or not?

63. Another question that ponders over is the similarity of foundational facts the general points, and as such, whether the hearing on preliminary submissions required touching the foundational facts? Given above, was Hon'ble Justice Sureshwar Thakur justified in deciding the matter on merits? To the contrary, as reflected from the order sheets and judgments authored by learned Single Judge and Hon'ble Mr. Justice Dharam Chand Chaudhary, in the absence of arguments addressed and heard on merits, would it be appropriate and justiciable for this Court to give his opinion or decide the entire matter on merits? And if such an eventuality arises, whether to return the case to Hon'ble Chief Justice of High Court to assign the same to this Court or to constitute a new bench, for listing the entire matter on merits? Furthermore, whether these questions state the point of difference or not, or might fall in the scope of points of difference culled out by me, following clause 26 of Letters Patent, and as stated above. It is left open for the parties to argue this aspect at the time of the hearing. Similarly, an occasion would not arise to discuss and return a finding on Rule 5 of High Court Appellate Rules for sending a reference to Hon'ble Chief Justice for the full bench constitution.

64. Given above, the CMP No.5772 OF 2020 is closed in the terms and points of difference as culled out hereinabove.

Registry to list the LPA Nos. 33 & 39 of 2019 for final hearing.