

(1990) 05 PAT CK 0014

In the Patna High Court

Case No : C.W.J.C. No's. 4759 of 1987 and 1687 of 1987 (R) and 1043 of 1988 and 233 of 1988 (R)

Rajendra Sinha and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 03-05-1990

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 234

Citation : (1990) 38 BLJR 1332 : (1990) 2 PLJR 225

Hon'ble Judges : G.G. Sohani, C.J;S.C. Mookherjee, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.C. Mookherji, J.—These four applications involving question of inter se seniority between Judicial Officers of two batches appointed under the ad hoc Recruitment Rules of 1974 (hereinafter referred to as the 1974 Rules) and pursuant to 15th Judicial Service Examination under Bihar Judicial Officers (Recruitment) Rules, 1955 (in short "1955 Rules") have been heard together and are being disposed of by this common judgment.

2. Writ petitioners of C.W.J.C. Nos. 4759/87 and 1043/188 have been appointed under the 1974 Rules. The petitioners of C.W.J.C. Nos. 1686/87(R) and 233/88(R) have been appointed under the 1955 Rules. They have challenged the decision of the Standing Committee of High Court of Patna, respondent No. 2 reversing its earlier decision dated 14-6-1985 and placing respondents 3 to 35 of C.W.J.C. No. 4759/87 (hereinafter referred to as "respondents only") above them in the gradation list.

3. The petitioners of C.W.J.C. Nos. 1686/87(R) and 233/88 (R) have been appointed in the reserved quota for the Scheduled Castes and Scheduled Tribes under 1955 Rules and they have also challenged the seniority of the respondents i.e. 3 to 35 of C.W.J.C. No. 4759/87, who were appointed subsequent to them against reserved quota. Accordingly prayer has been made for issuance of a writ

of mandamus or any other appropriate writ directing the High Court of Patna to implement its earlier decision in the matter of inter se seniority in the light of the decision of this Court in C.W.J.C. No. 6126 of 1985 and of the Supreme Court in S. L. P. (Civil) Nos. 8698, 9354 and 11565 of 1986.

4. The Rules referred to above have been framed in exercise of the powers conferred by Article 234 of the Constitution by the Government of Bihar in consultation with the High Court of Judicature at Patna and Bihar Public Service Commission (hereinafter referred to as "the Commission").

5. The State Government in the year 1973 took a decision to create 152 temporary posts of Munsifs on ad hoc basis in the Bihar Civil Service (Judicial Branch) and on 18-5-1974, 1974 Rules were framed. On 14-10-1974 advertisement for appointment against the said created 152 posts were issued in terms of 1974 Rules. The petitioners of C.W.J.C. No. 4759 of 1987 and C.W.J.C. No. 1043 of 1988 along with others applied and on 23-5-1975 on the basis of the recommendation of the Commission, notification was issued by the State Government appointing the petitioners and others on ad hoc basis under 1974 Rules as Munsifs for a period of six months from the date of issuance of the notification.

6. By two notifications dated 17-11-1975 and 23-2-1976 the Munsifs, who had been appointed under 1974 Rules for a period of six months were again appointed Munsifs on ad hoc and purely temporary basis without limitation of period of appointment unlike the earlier notification. By a Government notification dated 22-11-1985, they were confirmed with effect from 1-9-1980.

7. Before the ad hoc appointments could be effected the State Government had already taken steps to appoint 200 Munsif created for the year 1972 by two notifications i.e. 100+100 in accordance with the provisions of 1955 Rules of which 152 posts were for general category candidates and the rest 48 posts were reserved for Scheduled Castes and Scheduled Tribes. For that purpose 15th Competitive examination was held. The Commission, as contained in annexure "R-1" to C.W.J.C. No. 4759 of 1987 submitted a merit list of the successful candidates numbering 241. Only 15 candidates out of the reserved quota were nominated as no other suitable candidate of that quota was available. Out of the said candidates 158 persons, in terms of 1955 Rules were appointed as Munsifs on temporary basis against the posts created for the year 1972 before the appointments of the present petitioners between 18-3-1975 to 22nd May, 1975. On the basis of that 15th Competitive examination nine more candidates were appointed under 1955 Rules against the temporary posts. There is no dispute upto this stage.

8. The controversy respecting inter se seniority between two batches of Judicial Officers, appointed under Rules of 1955 and 1974 arose, when the respondents, 23 in number, were appointed between 17-6-1976 and 1-9-1976. Some more Munsifs were appointed on the basis of the results of 16th, 17th and 18th

Judicial Service Examination in terms of 1955 Rules, but those appointments are not very much relevant for the purpose of deciding the point involved in these four applications.

9. The candidates appointed out of 15th Judicial Service Examination were confirmed by a notification dated 9-3-1983 with effect from different dates in the years 1977-78 whereas the candidates appointed according to 1974 Rules were confirmed by Government notification dated 22-11-1985 with effect from 1-9-1980 and thereby, the respondents appointed under 1955 Rules were made senior to those appointed under 1974 Rules. Similarly, the Munsifs appointed in subsequent three batches i.e. 16th, 17th and 18th Judicial Service Examinations were also made senior to the appointees under 1974 Rules.

10. This was a subject-matter of dispute in C.W.J.C. No. 6216 of 1985. where a part of Rule 9 of 1974 Rules, which says that on absorption a Munsif appointed under this Rule "will not be entitled to reckon the period of his service as a temporary Munsif for the purpose of his seniority" was challenged and that part of Rule 9 of 1974 Rules was quashed, as being unjust and arbitrary. Accordingly, a direction was issued that the seniority of the appointees under 1974 Rules be refixed in accordance with law ignoring the aforesaid objectionable part of Rule 9. The candidates appointed under 1974 Rules including the petitioner of C.W.J.C. Nos. 4759/87 and 1043/88 by virtue of that decision claimed their seniority from the actual date of their appointment i.e. 23-5-1975 and claimed to be placed above the respondents. Against that decision (i.e. C.W.J.C. No. 6126/85) the respondents and some of the members of 16th, 17th and 18th Batches, apprehending that their seniority might be affected, moved the Supreme Court in three Special Leave (Civil) petitions Nos. 8699, 9354 and 11565 of 86 and the same were dismissed in the following terms (as contained in annexures "1" to C.W.J.C. No. 4759/87):

Special leave petitions are dismissed. We shall make it clear and in fact it was also conceded by the counsel for the respondent Nos. 1-26 that the candidates, who were selected as result of the 15th examination and whose appointment was delayed on account of the medical examination and police verification of antecedents should be given seniority on the basis of their rank in the merit list in that examination. Any one appointed subsequent to 23-5-1975 on account of there being no vacancy, will rank in seniority according to the length of the service from the date of actual appointment.

The petitioner of SLP No. 9354 of 1986 again filed a review petition for clarification of that order and it was also rejected in review petition No. 403 of 1987 (annexure 2 to C.W.J.C. No. 4759/87) which reads as follows:

We have gone through the review petition and other connected papers. We do not find any merit in the review petition, which is accordingly dismissed.

11. In this background, the relevant facts of the cases of the respective parties may now be stated. The petitioners, appointed under 1974 Rules, have

challenged the seniority of respondents appointed under 1955 Rules as being illegal and unconstitutional, being in violation of Articles 16 and 14 of the Constitution of India, the decision of this Court in C.W.J.C. No. 6126/85 and the directions of the Supreme Court in Special Leave Petitions 8698, 9354 and 11565 of 1986. They had as stated above, initially challenged the date of their confirmation with effect from 1-9-1980 after the objectionable part of Rule 9(4) was quashed and claimed their seniority from the date of appointment i.e. 23-5-1975.

12. Further case of the petitioners is, that before the Supreme Court" respondents gave an incorrect picture that the appointments of some of them were delayed on account of medical report and police verification. The fact was that they were appointed during the period 17-6-1976 and 1-9-1976 when the posts originally reserved for Scheduled Castes and Scheduled Tribes were dereserved by the State Government without any advertisement. The petitioners had conceded before the Supreme Court that the candidates of 15th Judicial Service Examination under 1955 Rules and whose appointment was delayed on account of medical report and police verification of antecedents should be given seniority on the basis of their ranks in the merit list in the examination. On the date of the petitioner's appointment, there was no vacancy for any general category candidate of the 15th examination batch and the respondents were appointed against the vacancies that came to exist after the petitioners' appointment by virtue of the seats reserved for the Scheduled Castes and Scheduled Tribes candidate being dereserved and therefore, the respondents cannot rank senior to the petitioners in view of the direction of the Supreme Court and the earlier decision of the High Court on administrative side dated 14-6-1985. It is also stated that the seniority of the respondents for a period prior to the date of their actual appointment would amount to giving them fiction existence in the service when they were not even born in the service. This is violative of Articles 14 and 16 of the Constitution when the petitioners had already gained seniority over respondents by virtue of their promotion to the junior selection grade of Munsif from June, 1985 where is, the said benefit was given to the respondents from August, 1986 onwards.

13. The case of the petitioners in C.W.J.C. No. 233 of 1988 (R), who have been appointed out of the reserved quota for Scheduled Castes and Scheduled Tribes on the basis of the result of the 15th Bihar Judicial Service Examination under 1955 Rules, is that since they have been appointed against reserved quota of the posts created for the year 1972, the respondents of the present writ applications could not have been made senior to them although appointed at a later stage. It is stated that only 5 Scheduled Tribes candidates and 10 Scheduled Caste candidates under the reserved quota qualified in the 15th Judicial Service Examination and the result of the said examination was published in order of merit and altogether 167 candidates including 5 scheduled castes and 10 scheduled tribes were appointed finally by the authorities and the remaining 15 posts for Scheduled Tribes and 18 in all 33 for Scheduled Castes under the

reserved quota of that batch i.e. 15th Examination remained vacant.

14. Altogether 147 candidates including Scheduled Castes and Scheduled Tribes candidates were appointed as Munsifs under 1974 Rules, by a notification dated 23-5-1975. The respondents who although had qualified at the written examination of the 15th Judicial Service Examination, but could not come within 152 posts allotted for general candidates also appeared for appointment under 1974 Rules and out of them respondents 10, 12, 14, 17, 20, 31 and 36 of C.W.J.C. No. 233/88(R) in all seven were finally appointed according to the merit list subsequently prepared for appointment under 1974 Rules and placed against serial Nos. 19, 44, 47, 55, 89, 100 and 101. About one and a half year of the date of the appointment of the candidates under 1955 Rules, 33 vacancies which could not be filled due to non-availability of suitable candidate belonging to Scheduled Castes and Scheduled Tribes of that batch i.e. 15th Examination, were illegally filled by the respondents by decreeing those posts at the instance of State Government and the High Court amongst the candidates of general category, who though qualified in the written 15th Judicial Service Examination, could not be appointed for not being eligible ;for appointment on the basis of initial terms of appointment of 15th Examination and thereby, they were illegally accommodated against the vacant posts meant for scheduled castes and scheduled tribes candidates. It is further stated out of these 33 respondents 7, were serving as ad hoc Munsifs appointed under 1974 Rules and the rest were out of service prior to their appointment and therefore, the respondents, who joined the service after about one and a half years from the date of the appointment of the petitioners of C.W.J.C. No. 233/88 (R) could not be considered to be at par with these petitioners in the matter of appointment, confirmation, promotion and seniority. Their seniority can only be counted from the actual date of their appointment and not with retrospective effect. These petitioners have also challenged the validity of the order of the Standing Committee of the High Court dated 14-6-1985 by which the respondents were made senior to them on the ground, that the reserved quota of 15th Examination under 1955 Rules could not have been dereserved without obtaining praise approval of the appropriate Government and accordingly, it is prayed that the Scheduled Castes/Scheduled Tribes members of Judicial service, appointed under 1955 Rules out of reserved quota are entitled to rank senior to the respondents.

15. The writ petitioner in C.W.J.C. No. 1686 of 1987(R) appointed under 1955 Rules has also questioned the seniority of the respondents more or less on the same ground as has been taken by the writ petitioners in C.W.J.C. No. 233/88 (R). In short, the prayer of this petitioner is that respondents should be placed in the seniority list after the reserved candidates of both the batches, as in terms of the direction of the Supreme Court, they could not have been placed above them in the matter of seniority.

16. In the counter affidavits filed on behalf of the High Court of Judicature at Patna, the respondents, and the State of Bihar adopting the counter affidavit

given by the High Court, it is stated, inter alia, that the petitioners of C.W.J.C. Nos. 4759/87 and 1043/88 appointed in terms of 1974 Rules i.e. ad hoc Munsifs, could not claim seniority over the respondents, who were appointed as Munsifs against 200 posts required to be filled up in that year under Rule 4 of Rule 1955 and accordingly, the Commission made advertisement and selected 241 candidates on the basis of the merit and recommended in all 15 candidates belonging to scheduled castes and scheduled tribes and 185 candidates including the respondents belonging to the general category.

17. Between 18-3-1975 to 22-5-1975 all the 15 candidates belonging to the scheduled castes and scheduled tribes who had qualified at the 15th Judicial Examination were appointed, besides 143 of the general category. Thus, out of the 200 posts created for the year 1972 under 1955 Rules, 158 candidates including Scheduled Castes and Scheduled Tribes were appointed leaving a balance of 42 vacancies. Out of that, four appointments in the general category were made on 14-6-1975. On 4-7-1975, out of the remaining 38 vacancies, four posts were again filled up by the candidates out of that list. On 17-6-1976 and 7-7-1976, 24 and 6 appointments were made respectively. On 1-9-1976, 3 appointments were made and the last one vacancy was filled up on 24-8-1977. In this way, all the 200 vacancies of 1972 were filled up by different notifications and as such, their seniority on the basis of one merit list prepared and recommended by the Commission on the basis of the result of 15th Examination has been maintained.

18. Subsequently, 152 temporary posts were created to be filled up under the 1974 rules and on 23-5-1975 out of that, 147 posts were filled up and the remaining 5 vacancies were filled by notifications dated 23-8-1975 and 17-11-1986 respectively. In this way, 200 vacancies earmarked for the year 1972 under 1955 Rules and 152 created under 1974 Rules for the year 1974 were filled up by different notifications irrespective of the dates of their appointments.

19. The last process of selection of the candidates for the year 1972 on the basis of 15th Examination was conducted much before the last date of receipt of the applications for ad hoc appointment of Munsifs under 1974 rules. It is thus, not open to writ petitioners to claim seniority over the appointees against 1972 vacancies by disturbing the merit list prepared by the Commission as it is wholly unjust, improper and contrary to the provisions of the recruitment Rules.

20. It is further stated that the respondents cannot be allowed to suffer for the delay in issuing their appointment letters for no fault of theirs. The seniority given to the respondents is not contrary to the observations made by the Supreme Court in Special leave petitions (Civil) 8698, 9354 and 11656 of 1986. Because the vacancies created and earmarked for 1972 were in existence against which the 33 respondents were appointed. The delay on account of dereservation of the 33 posts originally reserved for scheduled castes and scheduled tribes, was wholly meaningless, uncalled for and contrary to the recruitment rules of 1955 Rules and therefore, the decision taken by the Standing Committee of the

High Court on 10-9-1987 treating the respondents as senior to the petitioners appointed under 1974 Rules was rational and justified find cannot be challenged. The grant of junior selection grade of scale of pay of the Munsif cadre to the Munsifs appointed under 1974 Rules has nothing to do with the decision of the Standing Committee dated 14-11-1986, which of course, stood rescinded by virtue of subsequent decision of the Standing Committee. The candidates of the ad hoc batch and "5th Judicial service examination were given junior selection grade scale of pay under ten years "TIME BOUND SCHEME OF THE STATE GOVERNMENT" in which the State Government had resolved to give junior selection grade of pay to all its employees who had not gained any promotion to usual course within a period of ten years of their joining service and hence, granting of junior selection grade scale of pay cannot be technically called to be a promotion for the very reason that this was granted in lieu of promotion.

21. In the facts and circumstances stated, the only question that falls for consideration is whether the inter se seniority of the parties has been fixed in terms of the direction of the Supreme Court.

22. Firstly, I would like to take up the points raised on behalf of the petitioners appointed under 1974. Rules Mr. Basudeva Prasad, learned Counsel for the petitioners has submitted that the order of the Supreme Court has been misconstrued by the Patna High Court in the matter of granting seniority to the respondents on a wrong motion that they are of the batch of 15th Judicial Service Examination. According to him, by virtue of Rule 3 of 1955 Rules, the Governor of Bihar decided to till up two hundred Munsifs, 152 from general category and the rest 48 from scheduled castes and scheduled tribes candidates and accordingly, the State Government requested the Commission to advertise the posts and send its recommendation in terms of Rules 19 and 20 of 1955 Rules. It is submitted that out of the general category candidates, the Commission could not have recommended for appointments of candidates of general category more than 152 nor the State Government could have appointed persons of that category exceeding that limit as the rest 48 were exclusively reserved for the scheduled castes and scheduled tribes. Mr. Prasad has further submitted that Rule 20 of 1955 Rules clearly says that if adequate number of candidates belonging to scheduled castes and scheduled tribes are not available for the vacancies reserved for them the only course open to the Commission is to submit a supplementary list nominating a sufficient number of such candidates as in their opinion are suitable for appointment to the service and therefore, it cannot be said, as has been sought to be made out by the respondents, that the words "Such candidates", means that on the ground of non-availability of candidates of reserved quota, the Commission can recommend candidates of general category to till up the vacant posts of scheduled castes and scheduled tribes. It has also been contended that in any event, the question of dereservation of the posts reserved for a particular section(s) of the Society to fill up the same by the candidates of other category does not arise. He has also submitted, at best the effect of dereservation of the reserved posts may be

either of the following:

- (a) The vacancies against reserved quota may be taken to have ceased to exist;
- (b) the authorities may carry forward the said vacant posts to be filled up in future;
- (c) the dereserved posts may be treated to be creation of new posts of Munsifs.

23. According to Mr. Prasad in either of the situations, any person appointed against those posts, cannot claim seniority over the petitioners, as that will be contrary to the direction of the Supreme Court for the simple reason that there was no vacancy when the petitioners were appointed and the sub-subsequent appointments of the respondents after the petitioners will only entitle them to have respective seniority with effect from their dates of appointment.

24. Rule 3 of 1955 Rules says that the Governor shall decide in each year the number of vacancies in the posts of Munsifs to be filled by appointments to be made on a substantive basis or on a temporary basis or both" Rule 19 says that:

The marks obtained at the viva voce test shall be added to the marks obtained at the written examination. The names of candidates will then be arranged by the Commission in order of merit, if two or more candidates obtained equal marks in the aggregate, the order shall be determined in accordance with the marks secured at the written examination. Should the marks secured at the written examination of the candidates concerned be also equal then the order shall be decided in accordance with the total number of marks obtained in the optional papers. From the list of candidates so arranged the Commission shall nominate such number of candidates as may be fixed by the Governor in order of their position in the list. The nominations so made shall be submitted to the Governor by such date in each year as the Governor may fix.

Rule 29 is as follows:

The Commission shall, while submitting their recommendations under Rule 19, consider the claims of qualified candidates belonging to the Scheduled Castes and the Scheduled Tribes. If the list of nominees submitted under Rule 19 does not contain an adequate number of candidates belonging to the Scheduled Castes and the Scheduled Tribes who may be appointed to the vacancies reserved for them the Commission shall submitted a supplementary list nominating a sufficient number of such candidates as in their opinion attain the required standard of qualifications and are in all respects suitable for appointment to the service.

24-A. There is no controversy that the Governor in the instant case decided to fill up 200 posts created for the year 1972 in terms of 1955 Rules. It cannot also be disputed that Rule 19 is a part of Rule 20 of 1955 Rules. Rule 19 can be categorised into two parts. In the first part, the procedure has been laid down as to how the list of candidates be arranged and the second part says that from the

list so arranged, the Commission shall nominate such number of candidates as may be fixed by the Governor in order of their position in the list. Similarly Rule 20 can be divided into two parts. The first part shows that in the event of non-availability of adequate number of candidates belonging to scheduled castes and scheduled tribes, what the Commission should do and the second part is that the Commission in the circumstances as laid down in the first part, may submit a supplementary list nominating sufficient number of such candidates as in their opinion are suitable for appointment to the service. According to Mr. Prasad, this supplementary list can only be made of such candidates, who are suitable according to the Commission, out of the candidates of reserved quota and thus, in any event, the supplementary list on account of non availability of the number of scheduled castes and scheduled tribes, cannot be filled by the candidates of any other category. In support of this, reliance has been placed on a decision of this Court reported in 1986 BLJR 890, Rajendra Sinha and Ors. v. State of Bihar and Ors., I regret, this contention cannot be accepted. In that case, some members belonging to the backward community were appointed for which, there is no provision in 1955 Rules. Under 1955 Rules, only persons of three categories can be appointed, i.e. general category, scheduled castes and scheduled tribes of which the quota of the later two has to be indicated. Now, question of all question is, whether the word such candidates" occurring in Rule 20 of 1955 Rules mean that the supplementary list should only contain a list of scheduled castes and scheduled tribes members of that list in the event of non-availability of adequate number of candidates if those categories or the Commission can send a supplementary list of any other candidates of that merit list prepared and submitted, if suitable candidates are available. It may be stated here that only one merit list on the basis of result of 15th Examination under 1955 Rules containing 241 candidates including the members of the scheduled castes and scheduled tribes was prepared and submitted. Out of that merit list, in installments 167 candidates including 15 scheduled castes and scheduled tribes candidates who were found to be suitable as per the recommendation of the Commission (Annexure-II to CWJC No. 4759/87) were appointed.

25. The real problem appears to have been created by the Commission as well as the State Government when those authorities on a wrong assumption proceeded to take steps for filling the remaining vacancies of 33 vacancies of 15th Examination which could not be filled up due to non-availability of the adequate number of candidates of the reserved quota by dereserving the posts, for which there was no scope in the rules framed under 1955 Rules. It is for the Commission to send a supplementary list of the candidates in terms of Rule 20 of 1955 Rules on account of non-availability of suitable number of candidates of reserved quota out of the remaining candidates of that very merit list prepared on the basis of 15th Examination. It appears, under that wrong notion the State Government took a decision in September, 1976 to dereserve the said 33 posts as contained in Annexure 6-A, to C.W.J.C. No. 4759/87 and after that decision the Commission nominated the names of remaining 33 candidates out of the merit

list of 15th Examination i.e. the respondents and that was the real cause for delay in appointing the respondents, though they were also in the inter se seniority list (Annexure R-3 to C. W. J. C, No. 4759/87) submitted to the State Government. The Commission afterwards realised the correct position in the matter of recommendation of the candidates for appointment in Judicial service and thereafter at a late stage, the Commission moved the State Government for amendment of Rule 20 of 1955 Rules. The High Court was accordingly moved, as amendment for recruitment of the members of Judicial Service could be made only in consultation with the High Court. The proposed amendment was not accepted by the High Court. In this connection Annexure C to C.W.J.C. No. 1686/87 (R) may be referred to. It appears from that annexure that on 1-12-1986 a letter was sent to the State Government by the Commission to the effect that an amendment in Rule 20 of 1955 Rules is necessary for making a provision to carry forward the vacancies of reserved quota, if the same could not be filled up in a particular year due to non-availability of adequate number of candidates belonging to scheduled castes/scheduled tribes.

26. In the circumstances, the interpretation of the words "such candidates" appearing in Rule 20 as advanced by Mr. Prasad cannot be accepted. Because, once a merit list has been prepared, it cannot be disturbed in any event and the candidates according to that list in order of merit have to be nominated by the Commission to fill the vacancies decided by the Governor under Rule 3, in terms of Rules 19 and 20. Therefore the supplementary list does not mean that it should be confined to scheduled castes and scheduled tribes only.

27. The other branch of argument of Mr. Prasad is that the respondents in any case could not be made senior to the appointees under 1974 Rules because after the deletion of the objectionable part of Rule 9(4) of the 1974 Rules, the length of service of the candidates appointed under 1974 Rules, has to be reckoned from the date of their appointment, i.e.. with effect from 23-5-1975. The respondents having been appointed after that date, will obviously rank junior to the appointees under 1974 Rules i.e. the petitioners. The other argument of Sri Prasad that the respondents cannot be taken to be of the batch of 15th Judicial Service Examination, because the State Government had decided to fill up only 152 posts out of the members of general category and the subsequent decision of the State Government to till up the 33 reserved posts by dereservation of those vacant posts has to be presumed to be creation of new posts and therefore, there was no vacancy when the petitioners were appointed under 1974 Rules. Accordingly, it has been submitted that in such a situation, in view of the direction of the Supreme Court in S. L. F. the respondents' seniority should be fixed according to their respective length of service.

28. On the other hand, Mr. S.N. Jha learned Counsel for the High Court and the Advocate General Mr. R.B. Mahto for the State have contended that the directions of the Supreme Court have been wrongly interpreted by the writ petitioners. It has been stated that the direction of the Supreme Court in special leave petitions

are very clear and according to them, Part I of the direction relates to those candidates of 15th Judicial Service examination whose appointments were delayed on account of medical reports and police verification of antecedent and Part II is in respect of the vacancies filled by the respondents which could not be filled earlier due to non-availability of the candidates of reserved quotas and the time taken by the State Government in dereserving the posts under a notion that unless that was done, the 33 vacant posts of 15th Examination of reserved quota could not be filled up. In support of this, Mr. Mahto has stated that there cannot be any controversy that only one competitive examination for filling up the vacancies of the posts of Munsifs of the year 1972 under 1955 rules was held i.e. 15th Judicial Service Examination and only one merit list was prepared, published and submitted after the result which also included the respondents and out of that list, 167 candidates including 15 from the reserved quota were appointed in order of merit by different notifications. The remaining 33, i.e. the respondents who were admittedly placed in that inter se seniority list above the 15 candidates belonging to scheduled castes and scheduled tribes were appointed subsequently in order of merit and therefore, in any case, neither the seniority of the respondents can be questioned as has been decided by the High Court in terms of the directions of the Supreme Court, nor it can be said that against "no vacancy" they were appointed. It is further stated that the plea of no vacancy, as has been raised by the petitioners is self contradictory in view of the fact that these petitioners had conceded before the Supreme Court in the SLP that those candidates of that respondents' batch i.e. of 15th Examination, whose appointment was delayed on account of medical examination and police reports could be given seniority according to their position in the merit list of that examination. It may be pointed out that one of such candidates had been appointed much after the petitioners, yet his seniority has not been questioned, nor could be questioned in view of the undertaking given by the petitioners before the Supreme Court and therefore, the petitioners cannot now be allowed to dispute the seniority of the respondents, who are also of the 15th examination batch.

29. In reply to the point raised relating to "no vacancy", the learned Advocate General has stated that this question also cannot be raised in the facts and circumstances of the case on two grounds, firstly, the vacancies were available as only 167, posts were filled out of the 200 posts created for the year 1972. The vacant posts as stated above, were delayed to be filled up due to the mistake committed by the Commission in not correctly following the procedure laid down in Rules 19 and 20 of 1955 Rules and for that matter, the time taken by the State Government to take a decision to fill up those posts on an assumption that unless these posts are dereserved the vacant posts of the quota of reserved posts could not be filled out of the remaining recommended candidates of the general category of 15th examination. It is stated that the question of dereservation in terms of 1955 Rules does not arise because once a merit list has been prepared, the Commission has to nominate suitable candidates for

appointment against the notified vacancies in accordance with Rules 19 and 20 and if the mistakes were not committed by the Commission, the respondents would have been appointed much earlier along with 167 candidates of 15th Examination conducted under 1955 Rules whose seniority has not been questioned. Lastly, it has been stated that the writ petitioners have also failed to establish that there was no vacancy when the respondents were appointed. There is much force in the contentions raised.

30. The direction of the Supreme Court in SLP has been already referred to. So far as the first part of the direction is concerned, there is no controversy between the parties. The second part of the direction is that "any one appointed subsequent to 23-5-1975 on account of their being no vacancy will rank in seniority according to the length of service from the date of actual appointment." The writ petitioners' contention that there was no vacancy cannot be accepted in view of the direction of the Supreme Court. Because unless it is shown that the respondents or any of them were/was appointed subsequent to 23-5-1975 when there was no vacancy, their/his seniority have/has to be fixed according to the gradation list of that batch of 15th examination. But nothing could be shown that these respondents were appointed when there was no vacancy(s). As a matter of fact, they were appointed out of the merit list, which was submitted after the result of 15th Judicial Service Examination. As stated above, in terms of Rules 19 and 20 of 1955 Rules they should have been nominated by the Commission earlier when the Commission was satisfied that adequate number of suitable candidates belonging to scheduled castes and scheduled tribes were not available to fill up all the vacancies of reserved quota, but suitable candidates of general category were available. In such circumstance, it is difficult to accept the bald submissions made on behalf of the writ petitioners that after dereservation, the 33 new posts were created by the State Government and the respondents were appointed against those posts. The source/basis of the appointments of the respondents was also the result of 15th Examination held under 1955 Rules to fill up the 200 posts of Munsifs, created for the year 1972 by the Governor under Rule 3 of 1955 Rules. In other words, the source/basis of the appointments of the respondents and the earlier 167 appointed under Rules 1955 as per the result of 15th Examination was the same. Had there been some other basis for the appointments of the respondents, there could have been some force in the contention raised on behalf of the petitioners.

31. There is another aspect of the matter, which cannot be overlooked. At the time of making appointment of the respondents, 33 vacancies of the posts created for the year 1972 were available, but could not be filled up due to non-availability of the candidates belonging to scheduled castes and scheduled tribes, and as such only 167 candidates had been appointed. These posts were filled by the respondents, who were also in the merit list of the candidates of 15th Examination. In this way, all the 200 vacancies were filled up by different notifications and hence, irrespective of their dates of appointments under 1955 Rules to fill up the posts which include the respondents also, created and

earmarked for the year 19 72 shall automatically retain their seniority in accordance with the merit list prepared and recommended by the Commission for appointment of 200 Munsifs. In that view of the matter also, it cannot be said that there being no vacancy, the respondents' seniority should be according to the length of their respective service. It thus, follows that the inter se seniority of the respondents has been rightly fixed by the High Court according to the direction of the Supreme Court on the basis of the inter se seniority list prepared and submitted by the Commission (Annexure R-3 to C.W.J.C. No. 4759/87).

32. So far as the case of the scheduled castes/scheduled tribes candidates petitioners of C.W.J.C. No. 1686/87 (R) and 233/88 (R) questioning the seniority/gradation list of the respondents is concerned, it has to be rejected for the same reason that the respondents have been given the same position in which they were placed in the merit and inter se seniority lists of 15th Examination. No doubt 48 posts were reserved, but the position of the candidates nominated by the Commission has to be maintained in accordance with the list. This position has not been disputed by either of the parties. It is not in dispute that in the Judicial Service there is no roster system I therefore, find and hold that the inter se seniority/gradation list of the writ petitioners and the respondents has been made by the High Court (Respondent No. 2) in terms of the directions of the Supreme Court in SLP (Civil), referred to above.

33. The result is that all the four writ petitions fail and accordingly, the same are dismissed. There shall, however, be no order as to costs.

G.G. Sohani, C.J.

34. I agree.