
(2017) 09 AHC CK 0005
In the Allahabad High Court
Case No : 1020 of 2015

Siraj Ahmad

APPELLANT

Vs

State of U.P. through Principal Secretary

RESPONDENT

Date of Decision : 11-09-2017

Acts Referred:

Uttar Pradesh Urban Planning and Development Act, 1973, Section 5(a), Section 5(a)(2) -
Constitution of India, — Article 14, Article 16 -
Uttar Pradesh Development Centralized Services Rules, 1985 — Rule 21, Rule 7 -
Uttar Pradesh Palika (Centralized) Services Rules, 1966, — Section 17(c)

Citation : (2017) 09 AHC CK 0005

Hon'ble Judges : Narayan Shukla, Virendra Kumar

Bench : Division Bench

Advocate : Sanjay Kumar Srivastava

Final Decision : Dismissed

Judgement

1. Heard Shri Sanjay Kumar Srivastava, learned counsel for the petitioner as well as learned Standing Counsel. 2. This writ petition has been instituted on behalf of petitioner for quashing of the order dated 16.04.2015 passed by the respondent No.1 and claimed promotion on the post of Assistant Engineer (Civil) against 5% horizontal reservation being possessing degree of B.E. within 50% reservation quota on the post of Assistant Engineer (Civil) with effect from 18.01.1995. 3. It is pleaded that initially petitioner was appointed on the post of Junior Engineer in the pay scale of Rs. 485-860/- vide order dated 30.03.1987 issued by the respondent No.1 with the prior approval of the Excellency of Governor of Uttar Pradesh after due advertisement and selection under the provisions of U.P. Palika Centralized Services and Development Authorities/Centralized Services. The petitioner submitted his joining on 08.04.1987 in Agra Development Authority, Agra. It is further submitted that appointment of petitioner on the post of Junior Engineer was made against the substantive vacancy of Junior Engineer after due advertisement and selection. During the period of his service the petitioner

completed his degree in B.Sc. Engineering from Aligarh Muslim University, Aligarh and the final result of the same was declared on 08.06.1987. The petitioner, after obtaining the above degree informed the respondents that since he has obtained B.E. Degree (Civil), therefore, he is submitting the mark sheet to the Government on 28.07.1987 through proper channel. The petitioner became eligible for consideration and promotion to the post of Assistant Engineer (Civil) in Centralized Services of Development Authority under Sub Rule (3) of Rule 24 of Service Rules, 1985. The eligibility year wise and the list of eligible candidates for consideration of promotion has to be prepared. The "year" means a period of 12 months, i.e., from the first day of July of a calendar year and therefore the petitioner should have been included in eligibility list of the year 1987, 1988, 1989, 1990, 1991, 1992, 1993, 1994 and 1995. 4. It is further contended that the State Government asked information on 25.09.1987 from all the development authorities to inform that how many Junior Engineers are having degree of B.E./A.M.I.E. In compliance of the aforesaid order dated 25.09.1987 the Vice Chairman, Agra Development Authority, Agra, vide letter dated 04.12.1987 informed the State Government that in Agra Development Authority, Agra the petitioner is the only Junior Engineer of Centralized Services who is possessing the degree of B.E. The details of degree obtained by 11 junior engineers have been mentioned in para-13 of the petition. 5. It is further pleaded that respondent No.1 on 16.04.2015 has rejected the claim of the petitioner for his promotion from the date 18.01.1995, from which juniors of petitioner have been promoted. It is mentioned that respondent No.1, in utter violation of law laid down by Hon"ble Apex Court in the case of Direct Recruit Class-II Engineering Officers Association v. State of Maharashtra and others : 1990 (2) SCC 715 as well of this Hon"ble Court in Special Appeal No. 75 of 2012, decided on 13.02.2014 (State of U.P. v. Rajendra Prasad Dwivedi and others), confirming the judgment and order dated 19.08.2011 which was modified on 09.11.2011 passed in Writ Petition No. 3421 (SS) of 1996 (Rajendra Prasad Dwivedi v. State of U.P. and others). 6. It is also contended that the State Government vide circular dated 11.03.1994 had decided that substantively and regularly appointed junior engineers under Centralized Services of Government Authorities, who have obtained degree of B.E./A.M.I.E. during service before 1995 would be eligible for consideration of promotion on the post of Assistant Engineer (Civil) under 5% horizontal reservation within 50% reservation quota post. The impugned order, thus, has been passed arbitrarily and in violation of Article 14 and 16 of the Constitution of India and also in violation of decision of Hon"ble Apex Court that the period of continuous officiation was directed to be counted for seniority. It was further held by Hon"ble Apex Court that if initial appoint is not made following the procedure laid down by the Rules but the appointee continues in the post uninterruptedly till the regularization of his services in accordance with rules the period of officiating service be counted. 7. The petitioner has also relied upon the decision of this Court dated 19.08.2011 passed in Writ Petition No. 3421 (SS) of 1996 (R. P. Dwivedi v. State of U.P. and others) which was modified vide order dated 09.11.2011, in which this Court has

held as follows: "Upon perusal of the Government Orders dated 26th of August, 1992 as well as 11th of March, 1994, I find force in the submission of the petitioner, therefore, I am of the view that as soon as the petitioner obtained the qualification of AMIE in 1993, he became eligible for promotion to the post of Assistant Engineer. Though only gaining the qualification does not create right of promotion, but I am of the view that if thereafter any promotion has been given to others particularly junior to the petitioner, the petitioner is liable to be considered for promotion from the said date along with consequential benefits. In light of the law laid down by the Hon"ble Supreme Court, in the case referred to here-in-above, I hereby also observe that the fact that the petitioner was not confirmed in the service, shall not come in the way of the petitioner's promotion as an impediment and the petitioners services even on ad hoc basis on the post of Junior Engineer shall be taken into consideration for the purpose of promotion to the higher post. Accordingly a direction is issued to the respondents to consider the petitioner's case for promotion to the higher post from the date of promotion of his junior within two months, after receipt of a certified copy of this order." 8. It is further submitted that the above mentioned decision was upheld by Division Bench of this Court in Special Appeal No. 75 of 2012, State of U.P. v. R. P. Dwivedi. The Division Bench while asserting the said appeal has held as follows: "On due consideration of rival submissions, we find considerable force in the arguments of respondent. The condition of length of ten years" service was relaxed. The respondent, though appointed on ad-hoc basis as Junior Engineer on 24.02.1987, had obtained the degree of AMIE on 10.10.1993 before Sri Sunil Dutt Sharma and Sri Sajid Hasan who passed the examination in 1994. As the vacancies were available and the private respondent was qualified to be considered for promotion in 1993, he should have been considered even prior to the aforesaid persons." 9. It is further contended that the judgment and order dated 13.02.2014 passed by the Division Bench of this Court in Special Appeal No. 75 of 2012, has been confirmed by Hon"ble Supreme Court of India by dismissing the special leave petition filed by the State of U.P. vide judgment and order dated 12.01.2015. 10. On the above mentioned facts and circumstances, following relief has been sought in this writ petition: "(i) issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 16.04.2015 passed by the Opposite party No.1 contained as Annexure No. 1 to the writ petition. (ii) Issue a writ, order or direction in the nature of mandamus commanding the opposite parties to consider and give promotion to the petitioner on the post of Assistant Engineer(Civil) against 5% horizontal reservation being possessing degree of B.E. in 50% reservation quota post of Assistant Engineer (Civil) with effect from the date 18.01.1995 when the persons have been given promotion on the said post of Assistant Engineer (Civil) against 5% horizontal reservation in 50% reservation quota post who obtained degree of BE/AMIE subsequent to the petitioner after the year 1987 along with all consequential benefit of services forthwith ignoring the impugned order." 11. The learned Chief Standing Counsel on behalf of respondent No.1 has filed counter affidavit. It is stated that in exercise of powers granted under various sections of

the U.P. Municipal Corporation Act, 1959 (hereinafter referred to as the, "Act, 1959") and U.P. Municipalities Act, 1916, His Excellency the Governor of U.P. notified the U.P. Palika (Centralized) Services Rules, 1966, which was fully applicable on all Municipal Corporations, Municipalities/ Municipal Councils and Nagar Panchayats throughout the State. Under Rule-3 of the U.P. Palika (Centralized) Services Rules, 1966, several types of Centralized Services for Municipalities/ Municipal Corporations were created including U.P. Palika Engineering (Subordinate) Service and U. P. Palika Engineering (Superior) Service. Under these Rules 50% of the posts of Assistant Engineers were to be filled up through promotion and 50% through direct recruitment through the U.P. Public Service Commission. 12. It is further stated that three Government Orders were issued on 25.05.1979, 13.01.1987 and 26.08.1992 for Nagar Palika Centralised Services providing 5% promotion quota for such Junior Engineers, who had passed A.M.I.E. Examination or had obtained B.Tech Degree on the basis of seniority subject to rejection of unfit. No minimum required length of service was, however prescribed. 13. It is further stated that U.P. Urban Planning and Development Act, 1973 was notified giving the power to the Government to notify certain urban areas as Development Areas and creating Development Authority in relation to such Development Areas. Under Section 5(A) added with effect from 22.10.1984, the State Government was empowered to create at any time by notification, one or more Development Authorities Centralized Services, common to all Development Authorities and to prescribe the method and condition of recruitment thereto. Under Section 5(A)(2), upon the creation of a Development Authorities Centralized Service, a person serving on the post included in such service immediately before such creation was deemed to be absorbed in such service finally, if he was already confirmed in his post, and provisionally if he was holding temporary or officiating appointment. The suitability of persons absorbed provisionally for final absorption in such Centralized Services was to be adjudged by a Section Committee appointed for the said purpose by the State Government. 14. It is further stated that the U.P. Development Authorities Centralized Service Rules, 1985 were notified in exercise of powers under Section 55 read with Section 5(A) of the U.P. Urban Planning and Development Act, 1973. The suitability of provisionally absorbed persons under Sub-Section (2) of Section 5A of the Act was to be determined by a Screening Committee on the basis of qualifications, character rolls and service records of persons and their seniority was to be determined on the criteria of continuous length of service including services rendered in a Development Authority, Nagar Mahapalika, Nagar Palika or Improvement Trust on similar posts under Rule 7. Under Rule-8, recruitment to various categories of posts in service was to be made in accordance with Schedule-II, Schedule-III, Schedule-IV, Schedule-V and Schedule-VI of the Uttar Pradesh Development Authorities Centralized Services Rules, 1985, with a further power to the State Government to fill in vacancy by deputation in case need was felt for the same. Under Rule-21, recruitment by promotion was to be made on the basis of seniority subject to rejection of unfit in consultation with the U.P. Public Service

Commission. The eligibility list for selection on the basis of seniority subject to rejection of unfit was to be made in accordance with Sub Rule (2) to (7) of Rule 24 of the said Service Rules. 15. It is further submitted that in accordance with Rule 20(A) added vide third amendment to the Service Rules, 1992 which prescribes any person who is directed appointed on adhoc basis on or before 01.10.1986, and was continuing in service as such on the date of commencement of the Rules and possessed requisite qualifications prescribed under the Rules for regular appointment at the time of such adhoc appointment, and had completed three years or more of continuous service was to be considered for appointment in permanent or temporary vacancy as may be available on the basis of the service record and suitability before any regular appointment is made in such vacancy. These persons absorbed under the said Amended Rule were entitled to seniority only from the date of appointment after selection in accordance with the amended rule and in all cases were to be placed below the persons appointed in accordance with the procedure for direct recruitment contained in Part-V of the Rules prior to the appointment of such persons under these rules. 16. It is further submitted that the petitioner was appointed on an adhoc basis as Junior Engineer on 30.03.1987. A perusal of the appointment order filed as Annexure No.2 to the writ petition would show that in the first paragraph itself it has been mentioned that the appointment is on an adhoc basis in the pay scale of Rs. 485-860/- as Junior Engineer (Civil) on a purely temporary basis and from the date of joining, the petitioner shall work Junior Engineer (Civil) in Agra Development Authority on a purely temporary and adhoc basis and the said adhoc appointment shall be for a period of one year or till regularly selected candidates were available from the U.P. Public Service Commission, whichever was earlier. 17. It is contended that after coming into force of Section 5(A) of the U.P. Urban Planning & Development Act, 1973, an interim seniority list was circulated in 1989, in which the date of initial engagement in Local Body concerned was indicated against the name of each such employee, who was absorbed under Section 5(A) of the Act of 1973 and Rule 20 of the Rules of 1985. It was this list, which was utilized for preparing eligibility list for promotions in the various vacancies of Assistant Engineers in the various Development Authorities. It is further contended that an eligibility list was prepared which was placed before the Departmental Promotion Committee on 13.01.1995 in pursuance of which regular promotions were made on the post of Assistant Engineer in various Development Authorities. 18. It is further contended that a Screening Committee was constituted and it considered the absorption of all adhoc as well as confirmed employees on similar post in various Development Authorities/Nagar Palikas and thereafter seniority list of finally absorbed officers under Sub Section (2) of Section 5A was issued on 13.04.1996. 19. It is further contended that after the issuance of Government Order dated 11.03.1994, creating for the first time 5% degree quota within the 50% promotion quota meant for the Junior Engineers to the post of Assistant Engineer, all eligible persons were considered for promotion on 13.01.1995 by the Departmental Promotion Committee. All such persons/ members of service,

who had degree qualifications before 13.01.1995 were considered in the degree quota created for the first time in the selection year June, 1994 to July, 1995. The details of date of joining service and year of getting degree of eight employees is mentioned in para-17 of the counter affidavit. 20. It is further submitted that the petitioner was appointed on purely temporary and adhoc basis on 30.03.1987 and was not a member of service till 23.11.2002, although, he had obtained a degree qualification on 08.06.1987 from Aligarh Muslim University as alleged, he could not be considered for promotion in the D.P.C. held on 13.01.1995. It is from the date of regularization, i.e., 23.11.2002 alone that the petitioner became a member of service and then alone he could have been considered for promotion. It is categorically submitted that no junior to the petitioner has been considered and promoted in the D.P.C. held on 13.01.1995. 21. It is further submitted that petitioner was appointed on a purely adhoc and temporary basis as Junior Engineer (Civil) in the pay scale of Rs. 485-860/- vide order dated 30.03.1987, however, it is specifically denied that the petitioner's appointment was made after due advertisement and selection. It was because the petitioner was not appointed after due selection in accordance with the procedure prescribed under the Service Rules of 1985, that his appointment was termed as adhoc and temporary and only till regularly selected candidate from the U.P. Public Service Commission became available. 22. It is further contended that the petitioner became a member of service of the Centralized Services only after 23.11.2002 when he was regularized. 23. It is further contended that before 11.03.1994, there was no provision for grant of 5% degree quota within the 50% promotion quota meant for the promotion to the post of Assistant Engineer. The eligibility list which was prepared for the D.P.C. to be held on 13.01.1995 contained the names of only those persons, who had obtained degree qualification before the date of preparation of eligibility list and were members of service, and after due consideration of all such persons on the basis of their seniority determined from the date of their substantive appointment, and not by the date of their obtaining degree qualification promotion orders were issued on 18.01.1995. U.P. Development Authorities Centralized Services Rules, 1985 clearly provides the criteria for promotion as seniority subject to rejection of unfit. Even though for 5% degree quota, no minimum length of service was prescribed for eligibility, yet vacancies were to be determined and eligibility list was to be prepared only in order of seniority. Shri Suneel Dutt Sharma, Sajid Hasan, Amar Pratap Singh and Rishipal Singh were all appointed on adhoc basis in 1983 and 1984. They were considered for absorption and made members of service since the date of their initial appointments. The petitioner became eligible for being considered for regularization after the cut off date under Rule-20(A) was changed from 01.10.1986 to 29.07.1991, by means of Seventh Amendment to the Service Rules in 2001. 24. It is further contended that for the recruitment year 1993-94 on which the Government Order dated 11.03.1994 applied, all junior engineers who had obtained degree qualification up to 30.06.1994 could be validly included, if they were otherwise regularly recruited/ absorbed members of service. The petitioner has alleged that Shri S. D. Sharma, Amar

Pratap Singh, Anil Kumar Mishra and Sajid Hasan were wrongly included in the eligibility list, however, the petitioner has not arrayed any of the aforesaid four junior engineers as respondents in the writ petition. Hence, any allegation of wrong inclusion of the aforesaid four junior engineers deserves to be ignored and the petition deserves to be dismissed for non joinder of necessary parties. 25. It is submitted that for the recruitment year 1993-94, on which the Government Order dated 11.03.1994 applied, all Junior Engineers who had obtained degree qualification up to 30.06.1994 could be validly included in the eligibility list, if they were otherwise regularly recruited/ absorbed members of service. 26. It is further submitted that all the four junior engineers, whose names have been mentioned in paras-20 and 21 of the writ petition, were absorbed finally in the U.P. Development Authorities Centralized Services in terms of Rule 5A(iii) and their initial dates of appointment/ joining in the various Development Authorities were taken as their substantive dates of appointment after creation of Centralized Services on 22.10.1986. 27. It is further submitted that petitioner was initially engaged on adhoc basis on 30.03.1987 and he continued as such till 23.11.2002 when he was regularized. After 23.11.2002, he became a member of service and therefore he could not be considered for promotion before 23.11.2002. 28. The petitioner has wrongly applied the decision in the case of Direct Recruit Class-II Engineering Officers Association (supra). A person officiates on a higher post or a post carrying pay scale higher than the one on which post he holds substantive lien, in all such cases the person, who is so officiating on higher post/ higher pay scale is already a member of service substantively appointed on a lower post on which he continues to hold his lien. Such person continues to be a member of service since the date of his substantive appointment in the lower post and therefore his officiating service on higher post is of a different character than adhoc stop gap arrangement by means of adhoc appointment de hors the Service Rules made directly on the higher post without the person being actually member of service substantively. 29. It is further contended that in the State of U.P. v. Rajendra Prasad Dwivedi, the State has already filed Review Petition No. 188 of 2015, which is pending before this Hon"ble Court in which the Hon"ble Court on 19.05.2015 had passed an interim order. 30. It is further contended that petitioner's initial appointment was not made by following the procedure prescribed in Schedule-III to the Service Rules of 1985. 31. It is further contended that the aforesaid Rajendra Prasad Dwivedi was found ineligible because he was not the member of service till that time as the cut off date for absorption under Rule 20A was amended in 1992 to 01.10.1986. The rejection order dated 27.08.1998 was further challenged by Rajendra Prasad Dwivedi by amending his writ petition and he also challenged his own appointment order dated 24.02.1987 alleging that he was appointed on regular basis and not on adhoc basis. 32. It is further submitted that petitioner is not entitled to get benefit of decision in Writ Petition No. 3421(SS) of 1996 instituted by Shri Rajendra Prasad Dwivedi. It is further submitted that a meeting of D.P.C. was held in which the case of Shri Rajendra Prasad Dwivedi was considered, but it was found that out of 80 posts meant for

promotion quota, only 4 posts came within the 5% degree quota meant for promotion of junior engineers possessing A.M.I.E./Degree qualification. At that point of time against 5% quota meant for degree holders, 8 general category candidates and two reserved category Assistant Engineers were working. There was no vacancy left in 5% degree quota and moreover Shri Rajendra Prasad Dwivedi had been appointed on 24.02.1987, whereas several other persons also possessed degree qualification and were appointed much before him had still not been promoted in the 5% quota due to lack of vacancies. 33. It is further submitted that in August, 2014, Review Petition No. 575 of 2014 was filed by Shri Suneel Dutt Sharma and two other assistant engineers, before this Hon"ble Court praying for review of judgment and order dated 13.02.2014 as their seniority was being affected due to observations made in the aforesaid judgment, which review is pending before this Hon"ble Court. 34. It is further mentioned that Special Leave Petition No. 13830- 31/2014 filed by the State Government against the judgment and order dated 13.02.2014 was dismissed in limine with the observation that, "no ground for interference is made out in exercise of jurisdiction under Article 136 of the Contitution of India". 35. It is further submitted that the petitioner has named five junior engineers, who allegedly, were junior to him, but have been promoted under 5% degree quota wrongly. None of the five persons mentioned have been arrayed as opposite parties in the writ petition, hence, the allegation against them deserves to be ignored. No illegality has been committed by the answering respondents in considering the name of all junior engineers, who were regular member of service who had obtained B.E./A.M.I.E. qualification up to 30.06.1994 in the selection held on 13.01.1995. 36. It is also submitted that Hon"ble Supreme Court has dismissed the special leave petition in limine, thereafter the Review Petition No. 188 of 2015, which had been entertained and an interim order has been passed by the Hon"ble Division Bench on 19.05.2015. It is further contended that the decision of Hon"ble Apex Court in Direct Recruit Class-II Engineering Officers Association (supra) is inapplicable to the facts and circumstances of this case. 37. The petitioner has submitted his rejoinder affidavit and reiterated the earlier contentions made by him in the writ petition. 38. We have perused the impugned order dated 16.04.2015 and available record. 39. Earlier petitioner had instituted the Writ Petition No. 568 (SS) of 1996, Siraj Ahmad v. State of U.P. and another, which was decided by this Court on 10.11.2014 and following order was passed: "In these circumstances, the writ petition is disposed of finally with the direction that the representation dated 11.08.1995, duly forwarded by Letter No.316/GD/HQ/95 dated 23.08.1995, if not decided uptil now, be decided in accordance with law by a speaking and reasoned order within a period of three months from the date of submission of a certified copy of this order." 40. The competent authority, while deciding representation of the petitioner has considered Rule 8(1) of U.P. Development Authorities Centralized Services Rules, 1985 and observed that the eligibility criteria fixed for promotion on the post of Assistant Engineer from the post of Junior Engineer is prescribed education qualification for the post of Junior

Engineer and on first July of selection year a person appointed as Junior Engineer should have completed ten years' service. It is also observed that after constitution of Development Authorities Centralized Services right of appointment and promotion was vested with the State Government. According to Section 5(A)(2) of U.P. Urban Planning and Development Act, 1973, regularization of service matters of employees of Central Services of Development Authorities were finally dealt with the provisions of Section 5(A)(2) of U.P. Urban Planning and Development Act, 1973. It is also mentioned in this impugned order that benefits of Government Order dated 11.03.1994 was extended only to the substantially appointed Junior Engineers who obtained B.E./ A.M.I.E. degree before the year 1995 while they were in service. 5% promotion posts were reserved within 50% promotional quota of the Junior Engineers. In the selection year 1995-96 eight persons were promoted on the post of Assistant Engineer it was mentioned in para-6 of the impugned order. 41. It is further mentioned in it that according to Rule 21 of U.P. Development Centralized Services Rules, 1985 it is also provided that these promotions were made according to the amended U.P. Public Service Commission Approved Selection Process Rules, 1970 on the basis of rule of rejection of unfit and seniority. According to Column (2) of U.P. Development Authorities Centralized Services Fifth Amendment Rules, 1997, 45% posts of Assistant Engineers were to be filled by promotion amongst the substantially appointed Junior Engineers (Civil) and 5% post has to be filled amongst substantially appointed such Junior Engineers (Civil) who obtained B.E./ A.M.I.E. degree. The rider is also provided that if required Junior Engineers for 5% quota would not be available then unfilled posts shall be filled according to sub Clause (A). 42. The Principal Secretary of the Department also found that the petitioner was substantially appointed/regularized on 23.11.2002 and none of the employee junior to him was promoted on the post of Junior Engineer (Civil), therefore, representation dated 11.08.1995 submitted by the petitioner was rejected vide impugned order passed by the Principal Secretary. 43. The learned counsel for the petitioner has argued that in paras- 4, 5 and 6 it is pleaded that petitioner was appointed on the post of Junior Engineer vide order dated 30.03.1987 by the respondent No.1 with the approval of Governor of Uttar Pradesh after due advertisement and selection under the provisions of U.P. Palika Centralized Services and Development Authorities/ Centralized Services. He joined on the post of Junior Engineer on 08.04.1987 against the substantive vacancy of Junior Engineer. 44. We have perused the appointment order dated 30.03.1987 by which petitioner Shri Siraj Ahmad was appointed temporarily for one year until regular selection was made by U.P. Public Service Commission. It is mentioned in this appointment letter that his services were liable to be terminated without any prior information. Although, *ad hoc* word is also mentioned in this appointment letter along with the word temporarily. But this fact does not extend any benefit to the petitioner because his services were completely temporary and his tenure was only for one year initially. The post of junior engineer is subjected to the selection made by U.P. Public Service Commission, therefore, his selection made

on 20/21.02.1987 with the approval of Hon'ble Excellency Governor of State Uttar Pradesh was not according to the rules governing U.P. Palika Centralized Services and Development Authorities/Centralized Services. 45. It is relevant to mention here that the petitioner in his rejoinder affidavit has only stated in para-8 that Rajendra Prasad Dwivedi was appointed on the post of Junior Engineer on adhoc basis on 24.02.1987 after due advertisement by the Interview Board/Selection Committee duly constituted although selection and appointment was made while adopting the procedure of regular recruitment and appointment. But in the grounds of petition or rejoinder affidavit it is nowhere specifically pleaded that the petitioner was appointed on the post of Junior Engineer (Civil) with the approval of U.P. Public Service Commission against the substantive posts and how many substantive posts were available on the date of his appointment it has also not been pleaded by him, against which, he was appointed as Junior Engineer temporarily without following the rules prescribed of U.P. Palika Centralized Services and Development Authorities/Centralized Services. Moreover, appointment letter of Shri Rajendra Prasad Dwivedi has also not been provided. 46. The petitioner's services were completely temporary and were liable to be terminated without giving him prior notice, therefore, the petitioner cannot claim that he was posted against the substantive posts available for the Junior Engineers (Civil) in the department. 47. As far as the petitioner has relied upon the judgment dated 19.08.2011 passed in Writ Petition No. 3421 (SS) of 1996 (R. P. Dwivedi v. State of U.P. and others), we have perused the judgment dated 19.08.2011 passed by this Court. The petitioner-Rajendra Prasad Dwivedi claimed his appointment as Junior Engineer on adhoc basis and challenged his appointment order dated 24.02.1987 on the ground that being the work charge employee he could be appointed as a regular Junior Engineer and there was no occasion to appoint him as a Junior Engineer on adhoc basis as he had already worked on the work charge basis with effect from 25.08.1983. Therefore, it reveals that Rajendra Prasad Dwivedi was not appointed with the approval of U.P. Public Service Commission against the substantive vacancies available at the time of his appointment dated 24.02.1987 on adhoc basis. Therefore, contention mentioned by the petitioner in para-8 of the rejoinder affidavit does not support to him extending benefit for his appointment against the substantive vacancies after due advertisement and selection by Interview Board/Selection Committee. 48. It is pertinent to mention here that this Court after considering the Rule-8 which provides the source of recruitment under Sub Rule 2 which provides that the post mentioned in Schedule-II shall be filled in by the recruitment in the manner laid down in Rule 19. Schedule-II includes posts of Junior Engineer, accordingly, the appointment of petitioner on the post of Junior Engineer shall be treated through direct recruitment. Therefore, this Court held that on being appointed as a Junior Engineer, the petitioner cannot claim any benefit rendered to work charge employee in the capacity of Junior Engineer. This Court has also observed that once a person is appointed in accordance with law, may be on adhoc post and is continuing in service for a long period, his services shall be counted for promotion. This fact was not specifically raised and considered by

this Court on 19.08.2011 that whether Shri Rajendra Prasad Dwivedi was appointed in accordance with law on adhoc basis against the substantive posts. Therefore, no benefit can be extended to the petitioner on the basis of judgment dated 19.08.2011 passed by this Court in Writ Petition No. 3421 (SS) of 1996 (Rajendra Prasad Dwivedi v. State of U.P. and others). 49. Special Appeal No. 75 of 2012, (State of U.P. v. Rajendra Prasad Dwivedi and others) was preferred against the judgment dated 19.08.2011. We have also perused the same, in which it is mentioned on page-6 that claim petition was filed by the petitioner-Rajendra Prasad Dwivedi before the State Public Services Tribunal, in which the following order was passed: "The claim petition is allowed in part and the opposite parties are directed to consider the case of the petitioner for promotion from the post of Junior Engineer to Assistant Engineer from 18.01.1995 the date when Sri Sajid Hasan and Sri Sunil Dutt Sharma were promoted on the post of Assistant Engineer and pay petitioner's salary and arrears of salary admissible on the post of Assistant Engineer. The order will be implemented by O.P.s within three month from the date a certified copy of the judgment is produced before O.P.s. The rest of the petition is dismissed." 50. Therefore, only this fact was considered that Sajid Hasan and Sunil Dutt Sharma who obtained B.E./A.M.I.E. degree in the year 1994, whereas the petitioner obtained A.M.I.E. degree in 1993. Since Sajid Hasan and Sunil Dutt Sharma were promoted from the post of Junior Engineer to Assistant Engineer from 18.01.1995, therefore, it was found that the petitioner has made out a case for promotion to the post of Assistant Engineer. 51. This fact was not raised or considered before the Division Bench also that Shri Rajendra Prasad Dwivedi and another were appointed according to law and against substantive post of Junior Engineers, which were available on the date of appointment of Shri Rajendra Prasad Dwivedi and another petitioner. It is relevant to mention here that the date of appointment of Shri Sunil Dutt Sharma is 18.02.1983 and of Shri Sajid Hasan is 24.07.1984. The Division Bench vide judgment dated 13.02.2014 rejected the said Special Appeal No. 75 of 2012 and Writ Petition No. 523 (SB) of 2013 and found that filing of these petitions is only to delay the process of promotions of all the respondents, who in any case were eligible to be considered prior to Shri Sunil Dutt Sharma and Shri Sajid Hasan. 52. We have also perused the judgment dated 12.01.2015 passed by Hon"ble Apex Court in Special Leave to Appeal No. 13830-13831 of 2014, which were preferred against the impugned order dated 13.02.2014 passed by the Division Bench of this Court. The Hon"ble Apex Court has passed the following order: "Delay condoned. No ground for interference is made out in exercise of jurisdiction under Article 136 of the Constitution of India. The special leave petition is accordingly dismissed." 53. The respondent has contended that the Hon"ble Supreme Court has dismissed this special leave petition in limine. This fact was not raised or considered on merit that the petitioner was appointed according to law on adhoc basis against the substantive posts. In para-23 the respondent has specifically pleaded that Shri Sunil Dutt Sharma, Shri Sajid Hasan, Shri Amar Pratap Singh and Shri Anil Kumar Mishra were appointed on adhoc basis in 1983-84, but due to the provisions under Section 5A(2) of the U.P.

Urban Planning and Development Act, 1973 and the Services Rules, 1985, they were considered for absorption and made member of service from the date of their initial appointment. 54. It is further argued and contented by the respondents that whereas the petitioner became eligible for being considered for regularization after the cut off date under Rule 20(A) which was changed from 01.10.1986 to 29.06.1991 by means of Seventh Amendment to the Services Rules in 2001. 55. In para-28 it is specifically pleaded that for the recruitment year 1993-94 on which the Government Order dated 11.03.1994 applied, all Junior Engineers who had obtained degree qualification up to 30.06.1994 could be validly included, if they were otherwise regularly recruited/absorbed members of service. In para-21 it is specifically pleaded that the petitioner was appointed on a purely adhoc and temporary basis as Junior Engineer (Civil) in the pay scale of Rs. 485-860/- vide order dated 30.03.1987. It was specifically denied that the petitioner's appointment was made after due advertisement and selection. The petitioner was not appointed after due selection in accordance with the Service Rules of 1985 and his appointment was termed as adhoc and temporary and it was only till regularly selected candidate from the U.P. Public Service Commission, became available. 56. It is also mentioned in para-14 of the counter affidavit that after coming into force of Section 5(A) of the U.P. Urban Planning and Development Act, 1973, all employees who were working on similar post in various other local bodies, in which Development Authorities were later on constituted before 22.10.1984 were absorbed in service. Accordingly, an interim seniority list was circulated in the year 1989, in which the date of initial engagement in local body concerned was indicated against the name of each such employee, who was absorbed under Section 5(A) of the Act of 1973 and Rule-20 of the Rules of 1985. On the basis of this list, eligibility list for promotion in the various vacancies of Assistant Engineers in various development authorities was prepared and utilized. The learned counsel for the respondent has also argued that under the U.P. Development Centralized Services Rules, 1985, member of service has been defined as a member of absorption against the substantive posts in the cadre of service under Rule 7(i). According to Rule 7 of U.P. Development Centralized Services Rules, 1985, it is provided as follows: "7(i). Notwithstanding anything in Rule 28 the seniority of such officers and other employees who are finally absorbed in the service under sub-section (2) of Section 5-A of the Act shall be determined on the criterion of continuous length of service including the services rendered in a Development Authority, Nagar Mahapalika, Nagarpalika or Improvement Trust on similar posts." 57. As observed by us, the appointment of the petitioner on the post of Junior Engineer in Agra Development Authority was on a purely/ completely adhoc basis and the said adhoc appointment was only for the period of one year initially or was to continue till the regularly selected candidates available from the U.P. Public Service Commission, whichever was earlier. Therefore, the petitioner was unable to substantiate this fact that he was appointed according to law and against the substantive post of Junior Engineers available in Agra Development Authority on the date of his appointment, i.e., 30.03.1987. U.P. Palika (Centralized) Services

Rules, 1966 prescribes the procedure for direct recruitment which is as follows:

"15. Communication of the number of vacancies.- The Government shall intimate the number of vacancies to be filled up to the Commission in July of the year in which recruitment is to be made and also the number of vacancies, if any, reserved for candidates belonging to the Scheduled Castes. 16. Applications.-(a) The applications for recruitment to the Centralised Services shall be invited by the Commission and shall be made on the prescribed form which may be obtained from the Secretary to the Commission on payment and shall be submitted within such time as may be specified. (b) Candidates already employed in the Centralised Services shall submit their applications through proper channel to the Government who shall forward them to the Commission along with their periodical reports. 17. Mode of recruitment, scrutiny of applications, interview, etc. - (a) Recruitment to posts in the Administrative, Accounts and Ministerial Services shall be made on the basis of a Competitive Examination. The Commission shall scrutinise the applications received and shall permit the eligible candidates to appear at the competitive examination. No candidate shall be admitted to the examination unless he holds a certificate of admission granted by the Commission. After the marks obtained by the candidate in the written examination have been tabulated, the Commission shall summon for personality test as many candidates as have shown their suitability for the Service in written examination. The marks awarded to each candidate at the personality test shall be added to the marks obtained by him in the written examination and the order of merit will be determined on the aggregate of both. The Commission shall, subject to the provisions regarding the reservation of vacancies for the Scheduled Castes candidates, prepare a list of candidates arranged in order of preference and forward the same to Government. The number of names in this list shall be a little larger than the number of vacancies announced. If two or more candidates obtain equal marks in the aggregate, the Commission shall arrange their names in order of merit on the basis of their general suitability for the Service. (b) Recruitment to other Centralised Services shall be made on the basis of interview alone. The Commission shall scrutinise the applications received by them and summon for interview such candidates as seem best qualified for appointment to the Services. Thereafter the Commission shall prepare a list of candidates arranged in order of preference and forward the same to Government. (c) Notwithstanding anything contained in these rules, the Government may, in special circumstances, and in consultation with the Commission, make special or emergency recruitment of Centralised Services on the result of a Special Examination or interview conducted by the Commission. The academic qualifications, experience and age for such recruitment shall be such as may be decided by the Government in consultation with the Commission. The special examination and the interview shall be conducted in the manner laid down in sub-rule (a) or (b), as the case may be. The Commission shall prepare a list of successful candidates arranged in order of preference and forward the same to Government. The inter-seniority of such candidates shall be determined according to the position attained by them in order of merit at the special

examination/ interview and they shall be assigned seniority below the candidates appointed on the result of the regular examination and those appointed by promotion under Rule 20 of these rules in that particular year. 20. Promotions. - (1) Recruitment by promotion shall be made through a Selection Committee on the basis of seniority subject to rejection of unfit from amongst all eligible officers of the next lower grade of the same Centralised Service and for this purpose on eligibility list of officers shall be prepared in the manner laid down in subrule (2). (2) Except as otherwise provided in sub-rule (7) the Government shall prepare a list to be called the eligibility list of senior most eligible candidates containing names, so far as may be in the following proportion: for 1 to 5 vacancies-twice the number of vacancies subject to a minimum of 5; for over 5 vacancies-1½ times the number of vacancies subject to a minimum of 10:" 58. The petitioner is also unable to prove this fact that the U.P. Public Service Commission was ever consulted according to the Clause-17(c) before his appointment dated 30.03.1987. Therefore, the contention of the petitioner that his selection was made after due advertisement and interview with the approval of Governor does not come within the purview of Section 17(c) of U.P. Palika (Centralized) Services Rules, 1966. Hence, appointment of petitioner cannot be termed according to the law or the rules above mentioned because U.P. Public Service Commission was never consulted before making appointment of the petitioner and only approval of Governor was obtained as pleaded by the petitioner. 59. Hon"ble Supreme Court (Five Judges" Bench) in the case of Secretary, State of Karnataka and others v. Umadevi and others: (2006) 4 SCC 1 has observed in para 26, 34, 36, 37, 38, 39 and 43 as follows:- "26.Regular recruitment should be insisted upon, only in a contingency an ad hoc appointment can be made in a permanent vacancy, but the same should soon be followed by a regular recruitment and that appointments to non-available posts should not be taken note of for regularization. The cases directing regularization have mainly proceeded on the basis that having permitted the employee to work for some period, he should be absorbed, without really laying down any law to that effect, after discussing the constitutional scheme for public employment. 34.Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it were an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his term of appointment. It has also to be clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. It is not open to the court to prevent regular recruitment at

the instance of temporary employees whose period of employment has come to an end or of ad hoc employees who by the very nature of their appointment, do not acquire any right. High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions for absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of the constitutional scheme. Merely because, an employee had continued under cover of an order of Court, which we have described as "litigious employment" in the earlier part of the judgment, he would not be entitled to any right to be absorbed or made permanent in the service. In fact, in such cases, the High Court may not be justified in issuing interim directions, since, after all, if ultimately the employee approaching it is found entitled to relief, it may be possible for it to mould the relief in such a manner that ultimately no prejudice will be caused to him, whereas an interim direction to continue his employment would hold up the regular procedure for selection or impose on the State the burden of paying an employee who is really not required. The courts must be careful in ensuring that they do not interfere unduly with the economic arrangement of its affairs by the State or its instrumentalities or lend themselves the instruments to facilitate the bypassing of the constitutional and statutory mandates. 36. While directing that appointments, temporary or casual, be regularized or made permanent, courts are swayed by the fact that the concerned person has worked for some time and in some cases for a considerable length of time. It is not as if the person who accepts an engagement either temporary or casual in nature, is not aware of the nature of his employment. He accepts the employment with eyes open. It may be true that he is not in a position to bargain not at arms length-since he might have been searching for some employment so as to eke out his livelihood and accepts whatever he gets. But on that ground alone, it would not be appropriate to jettison the constitutional scheme of appointment and to take the view that a person who has temporarily or casually got employed should be directed to be continued permanently. By doing so, it will be creating another mode of public appointment which is not permissible. If the court were to void a contractual employment of this nature on the ground that the parties were not having equal bargaining power, that too would not enable the court to grant any relief to that employee. A total embargo on such casual or temporary employment is not possible, given the exigencies of administration and if imposed, would only mean that some people who at least get employment temporarily, contractually or casually, would not be getting even that employment when securing of such employment brings at least some succor to them. After all, innumerable citizens of our vast country are in search of employment and one is not compelled to accept a casual or temporary employment if one is not inclined to go in for such an employment. It is in that context that one has to proceed on the basis that the employment was accepted fully knowing the nature of it and the consequences flowing from it. In other words, even while accepting the employment, the person concerned knows the nature of his employment. It is not an appointment to a post in the real sense of the term. The claim acquired by

him in the post in which he is temporarily employed or the interest in that post cannot be considered to be of such a magnitude as to enable the giving up of the procedure established, for making regular appointments to available posts in the services of the State. The argument that since one has been working for some time in the post, it will not be just to discontinue him, even though he was aware of the nature of the employment when he first took it up, is not one that would enable the jettisoning of the procedure established by law for public employment and would have to fail when tested on the touchstone of constitutionality and equality of opportunity enshrined in Article 14 of the Constitution of India.

37.The invocation of the doctrine of legitimate expectation cannot enable the employees to claim that they must be made permanent or they must be regularized in the service though they had not been selected in terms of the rules for appointment. The fact that in certain cases the court had directed regularization of the employees involved in those cases cannot be made use of to found a claim based on legitimate expectation. The argument if accepted would also run counter to the constitutional mandate.

38. When a person enters a temporary employment or gets engagement as a contractual or casual worker and the engagement is not based on a proper selection as recognized by the relevant rules or procedure, he is aware of the consequences of the appointment being temporary, casual or contractual in nature. Such a person cannot invoke the theory of legitimate expectation for being confirmed in the post when an appointment to the post could be made only by following a proper procedure for selection and in concerned cases, in consultation with the Public Service Commission. Therefore, the theory of legitimate expectation cannot be successfully advanced by temporary, contractual or casual employees. It cannot also be held that the State has held out any promise while engaging these persons either to continue them where they are or to make them permanent. The State cannot constitutionally make such a promise. It is also obvious that the theory cannot be invoked to seek a positive relief of being made permanent in the post.

39.Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since, a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly employed. That would be treating unequals as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant

recruitment rules. 43. Normally, what is sought for by such temporary employees when they approach the court, is the issue of a writ of mandamus directing the employer, the State or its instrumentalities, to absorb them in permanent service or to allow them to continue. In this context, the question arises whether a mandamus could be issued in favour of such persons. At this juncture, it will be proper to refer to the decision of the Constitution Bench of this Court in *Dr. Rai Shivendra Bahadur v. The Governing Body of the Nalanda College* (1962) 1 LLJ 247 SC. That case arose out of a refusal to promote the writ petitioner therein as the Principal of a college. This Court held that in order that a mandamus may issue to compel the authorities to do something, it must be shown that the statute imposes a legal duty on the authority and the aggrieved party had a legal right under the statute or rule to enforce it. This classical position continues and a mandamus could not be issued in favour of the employees directing the government to make them permanent since the employees cannot show that they have an enforceable legal right to be permanently absorbed or that the State has a legal duty to make them permanent." 60. The Hon'ble Supreme Court (Two Judges Bench) in the case of *Surendra Prasad Tewari v. Uttar Pradesh Rajya Krishi Utpadan Mandi Parishad and Ors.* : (2006) 7 SCC 684 has observed in para 15 and 21 as follows:- "15. In the instant case, the appellant has continued in service for 14 years because of the interim order granted by the High Court on 15.9.1992. In the aforesaid case, the Constitution Bench has observed that merely because an employee had continued under cover of an order of the court, which the court described as "litigious employment", he would not be entitled to any right to be absorbed or made permanent in the service. 21.In the backdrop of constitutional philosophy, it would be improper for the courts to give directions for regularization of services of the person who is working either as daily-wager, ad hoc employee, probationer, temporary or contractual employee, not appointed following the procedure laid down under Articles 14, 16 and 309 of the Constitution. In our constitutional scheme, there is no room for back door entry in the matter of public employment...." 61. The Hon'ble Supreme Court (Two Judges Bench) in the case of *State of Karnataka and Others. v. M.L. Kesari and Ors.* : (2010) 9 SCC 247 has observed in para 4 and 8 as follows:- "4.Held that a temporary, contractual, casual or a daily-wage employee does not have a legal right to be made permanent unless he had been appointed in terms of the relevant rules....." 8.All persons who have worked for more than ten years as on 10.4.2006 (the date of decision in *Umadevi*) without the protection of any interim order of any court or tribunal, in vacant posts, possessing the requisite qualification, are entitled to be considered for regularization....." 62. The Hon'ble Supreme Court (Two Judges Bench) in the case of *State of Rajasthan and Others. v. Daya Lal and Others.* : (2011) 2 SCC 429 has observed as follows:- "2. The first matter relates to persons temporarily appointed as Assistant Superintendents in 1985 and 1986 in aided hostels. The prefix "Assistant" was omitted in 1996 and thereafter the Respondents were known as Superintendents. The second matter relates to a person temporarily appointed as a Superintendent on 30.6.1998 in an aided hostel. They filed writ

petitions contending that they were employed on full-time basis and were discharging functions similar to those of Superintendents in Government hostels, but were being paid only a meagre salary while their counterparts in Government hostels are paid much higher pay in the scale of Rs. 4000-6100 in the category (A) and (B) Hostels and Rs. 3200-4900 in category "C" hostels...." 3. Claim that they were appointed in the years 1995, 1996, 1997 and 1998, as part-time cooks/chowkidars in government hostels run by Social Welfare Department.By subsequent circular dated 21.1.1999, the District Social Welfare Officers were directed to remove part time chowkidars/cooks employed by the Department with effect from 1.2.1999 and replace them by ex-servicemen or widows of ex-servicemen. The Respondents submitted that this Court had earlier approved a scheme under which part time cooks and chowkidars who were working as on 1.5.1995 were regularized; They therefore sought a declaration that the circulars dated 28.12.1998 and 1.2.1999, were invalid and a direction for regularization by framing an appropriate scheme similar to the scheme framed by the State Government in pursuance of the order dated 26.5.1995 of the Rajasthan High Court in Anshkalin Samaj Kalyan Sangh, Banswara v. The State of Rajasthan WP No. 3453/1994. 4. He directed the State Government to frame a scheme on the same lines in which the State Government had earlier framed a scheme relating to part-time cooks and chowkidars (who were serving as on 1.5.1995)...." 5. In the next two appeals, a learned Single Judge by common order dated 5.2.2001 allowed the writ petitions of the Respondent in terms of the following directions issued in Anshkalin Samaj Kalyan Sangh (supra):The benefit of this Order shall be available to only those employees who were in service on the day of filing of petition or the date of this order as the case may be. The writ appeals filed by the State against the said order were dismissed by a division bench by common order dated 16.11.2005. 8..... We may at the outset refer to the following well settled principles relating to regularization and parity in pay, relevant in the context of these appeals: (i) High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularization, absorption or permanent continuance, unless the employees claiming regularization had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and courts should not issue a direction for regularization of services of an employee which would be violative of constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularized, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularized. (ii) Mere continuation of service by an temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be "litigious employment". Even temporary, ad hoc or daily wage service for a long number of years, let alone service for one or

two years, will not entitle such employee to claim regularization, if he is not working against a sanctioned post....."To claim or contend that the scheme should be applied to them by extending the cut off date or seek a direction for framing of fresh schemes providing for successive cut off dates. (iv) Part-time employees are not entitled to seek regularization as they are not working against any sanctioned posts." (v) Part time temporary employees in government run institutions cannot claim parity in salary with regular employees of the government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute. Secretary, State of Karnataka v. Uma Devi 2006 (4) SCC 1, M. Raja v. Ceeri Educational Society, Pilani 2006 (12) SCC 636, S.C. Chandra v. State of Jharkhand 2007 (8) SCC 279, Kurukshetra Central Co-operative Bank Ltd v. Mehar Chand 2007 (15) SCC 680, and Official Liquidator v. Dayanand 2008 10 SCC 1 were relied upon. 9. As noticed above, the Respondents in these appeals were appointed in pursuance of the Government & Aided Hostels Management Rules, 1982 which were issued by the State Government on 18.1.1982. Though they were referred to as Rules, they were not statutory rules framed by the State Government in pursuance of any power vested in the State by the legislature under any enactment....." 10.The Government was not liable to bear the expenses of salary and allowances of the employees of the aided hostels and it was for the private organizations which ran the aided hostels to meet the salaries of employees from their own resources. The persons employed in the aided hostels were the employees of the respective organizations running those hostels and not the employees of the Government. Therefore under no stretch of imagination persons employed by the aided hostels could be termed as persons employed by the State Government. Nor could the Government be held liable for their service conditions, absorption, regularisation or salary of employees of private hostels. They could not obviously maintain any writ petition claiming the status or salary on par with the corresponding post-holders in State Government service, nor claim regularization of service under the state government. Hence, the writ petitions by persons employed in aided hostels for relief of regularization or parity in pay, were not maintainable and the decision of the High Court granting any relief to them cannot be sustained. 11. The part-time cooks and chowkidars were employed on temporary basis in the Government hostels in the years 1995, 1996, 1997 and 1998. They approached the High court in the year 1999 (except Madan Lal Yogi who approached in the year 1997). The services of some of them had been terminated within one or two years from the date of temporary appointment. Though the State had taken a decision to terminate all those who were appointed on consolidated wage basis, the other Respondents continued because of the interim orders by courts. Service for a period of one or two years or continuation for some more years by virtue of final orders under challenge, or interim orders, will not entitle them to any kind of relief either with reference to regularization nor for payment of salary on par with regular

employees of the Department. 12.The decision in Anshkalin Samay Kalyan Singh is no longer good law. At all events, even if there was an one time scheme for regularisation of those who were in service prior to 1.5.1995, there cannot obviously be successive directions for scheme after scheme for regularization of irregular or part-time appointments....." Conclusion 13. In view of the above, both the questions are answered in the negative and in favour of the Appellants. Therefore, none of the Respondents is entitled to any relief. All the appeals are allowed and the orders of the High Court challenged in these appeals are set aside. Consequently, the writ petitions filed by the Respondents before the High Court stand dismissed." 63. The Hon"ble Supreme Court (Two Judges Bench) in the case of Brij Mohan Lal v. Union of India (UOI) and Ors. : (2012) 6 SCC 502 has observed in para 19, 60, 64, 66, 107, 123 and 146 as follows:- "19. Central Government Scheme for Fast Track Court has come to an end from 1.4.2011 and the Petitioners cannot be accommodated against the regular post in the regular cadre of the District Judges, including the 100 Courts of Additional District Judges created for one year in the regular cadre, which are to be filled up on the basis of a separate rules,...." 60.It becomes clear that the appointees cannot be said to have any legal, much less an indefeasible, right to the posts in question. Firstly, the posts themselves were temporary, as they were created under and within the ambit and scope of the FTC Scheme sponsored by the Union of India, which was initially made only for a limited period of five years. Now, financing of the FTC Scheme has already been stopped by the Central Government with effect from 31st March, 2011. No permanent posts were ever created. In other words, their appointments were temporary appointments against temporary posts. The relevant Rules of the States clearly postulate that the appointments made under the Rules were purely on ad hoc basis and urgent temporary basis and were terminable without notice. The Rules as well as the respective notifications of appointment issued to these appointees, unambiguously stated that no right would be conferred upon the appointees for regular promotion on the basis of working on ad hoc basis under the FTC Scheme. The notifications vide which the judges/candidates /Petitioners were appointed, particularly in the State of Gujarat, clearly specified these appointments to be temporary and for a period of two years on ad hoc basis. The cumulative effect of the notifications appointing the Petitioners to the said posts under the FTC Scheme and the relevant Rules governing them clearly demonstrate that these were temporary and, in some cases, even time-bound appointments, terminable without prior notice....." 64.... There should be a right vested in an employee, which is duly recognized and declared in accordance with the Rules governing the conditions of service of such employee before such relief is granted. Unless the Government employee holds any status as afore indicated, it may not be possible to grant relief to the Government employee, particularly, when such relief is not provided under the relevant Rules. 66. Right to a post is not a fundamental right but is a civil or a statutory right....." 107.The State cannot in, an ad hoc manner, create new systems while simultaneously giving up or demolishing the existing systems when the latter

have even statistically shown achievement of results. 123. Absorption in service is not a right. Regularization also is not a statutory or a legal right enforceable by the persons appointed under different rules to different posts. Regularization shall depend upon the facts and circumstances of a given case as well as the relevant Rules applicable to such class of persons....." 146.... 9. All the persons who have been appointed by way of direct recruitment from the Bar as Judges to preside over the FTCs under the FTC Scheme shall be entitled to be appointed to the regular cadre of the Higher Judicial Services of the respective State only in the following manner: (a) The direct recruits to the FTCs who opt for regularization shall take a written examination to be conducted by the High Courts of the respective States for determining their suitability for absorption in the regular cadre of Additional District Judges. (b) Thereafter, they shall be subjected to an interview by a Selection Committee consisting of the Chief Justice and four senior-most Judges of that High Court. (c) There shall be 150 marks for the written examination and 100 marks for the interview. The qualifying marks shall be 40 per cent aggregate for general candidates and 35 per cent for SC/ST/OBC candidates. The examination and interview shall be held in accordance with the relevant Rules enacted by the States for direct appointment to Higher Judicial Services. (d) Each of the appointees shall be entitled to one mark per year of service in the FTCs, which shall form part of the interview marks. (e) Needless to point out that this examination and interview should be conducted by the respective High Courts keeping in mind that all these applicants have put in a number of years as FTC Judges and have served the country by administering Justice in accordance with law. The written examination and interview module, should, thus, be framed keeping in mind the peculiar facts and circumstances of these cases. (f) The candidates who qualify the written examination and obtain consolidated percentage as afore-indicated shall be appointed to the post of Additional District Judge in the regular cadre of the State. (g) If, for any reason, vacancies are not available in the regular cadre, we hereby direct the State Governments to create such additional vacancies as may be necessary keeping in view the number of candidates selected. (h) All sitting and/or former FTC Judges who were directly appointed from the Bar and are desirous of taking the examination and interview for regular appointment shall be given age relaxation. No application shall be rejected on the ground of age of the applicant being in excess of the prescribed age." 64. The Hon"ble Supreme Court(Two Judges Bench) in the case of Secretary to Government, School Education Department, Chennai and Ors. v. Thiru R. Govindaswamy and Others. : (2014) 4 SCC 769 has observed in para 5 ,6 and 7 as follows:- "5.....Whether the services of the part-time sweepers could have been directed by the High Court to be regularized....." 6. In Union of India and Others. v. A.S. Pillai and Others. (2010) 13 SCC 448, this Court dealt with the issue of regularisation of part-time employees and the court refused the relief on the ground that part-timers are free to get themselves engaged elsewhere and they are not restrained from working elsewhere when they are not working for the authority/employer. Being the part-time employees, they are not subject to

service rules or other Regulations which govern and control the regularly appointed staff of the department. Therefore, the question of giving them equal pay for equal work or considering their case for regularisation would not arise. 7. This Court in *State of Rajasthan and Others. v. Daya Lal and Others.* AIR 2011 SC 1193, has considered the scope of regularisation of irregular or part-time appointments in all possible eventualities and laid down well-settled principles relating to regularisation and parity in pay relevant in the context of the issues involved therein. The same are as under: 8(i) The High Courts, in exercising power under Article 226 of the Constitution will not issue directions for regularisation, absorption or permanent continuance, unless the employees claiming regularisation had been appointed in pursuance of a regular recruitment in accordance with relevant rules in an open competitive process, against sanctioned vacant posts. The equality clause contained in Articles 14 and 16 should be scrupulously followed and Courts should not issue a direction for regularisation of services of an employee which would be violative of the constitutional scheme. While something that is irregular for want of compliance with one of the elements in the process of selection which does not go to the root of the process, can be regularised, back door entries, appointments contrary to the constitutional scheme and/or appointment of ineligible candidates cannot be regularised. (ii) Mere continuation of service by a temporary or ad hoc or daily-wage employee, under cover of some interim orders of the court, would not confer upon him any right to be absorbed into service, as such service would be "litigious employment". Even temporary, ad hoc or daily-wage service for a long number of years, let alone service for one or two years, will not entitle such employee to claim regularisation, if he is not working against a sanctioned post. Sympathy and sentiment cannot be grounds for passing any order of regularisation in the absence of a legal right. (iii) Even where a scheme is formulated for regularisation with a cut-off date (that is a scheme providing that persons who had put in a specified number of years of service and continuing in employment as on the cut-off date), it is not possible to others who were appointed subsequent to the cut-off date, to claim or contend that the scheme should be applied to them by extending the cut-off date or seek a direction for framing of fresh schemes providing for successive cut-off dates. (iv) Part-time employees are not entitled to seek regularisation as they are not working against any sanctioned posts. There cannot be a direction for absorption, regularisation or permanent continuance of part time temporary employees. (v) Part-time temporary employees in government-run institutions cannot claim parity in salary with regular employees of the Government on the principle of equal pay for equal work. Nor can employees in private employment, even if serving full time, seek parity in salary with government employees. The right to claim a particular salary against the State must arise under a contract or under a statute." 65. The Hon"ble Supreme court (2 Judges Bench) in the case of *Nand Kumar v. State of Bihar and Ors.* : (2014) 2 SCC(LS) 171 has observed in para 5, 20 and 22 as follows:- "5.... They cannot be treated as permanent Government employees..." 20.....It cannot be said that the status of the daily wage

employees can enjoy or acquire the same status as that of the regular employees. In these circumstances, we do not find that there was any discrimination between the daily wage employees and the regular employees as is tried to be contended before us....." 22....The projects in which the daily wagers were engaged, having come to an end, their appointment is necessarily terminated for want of work...The daily wagers are not appointees in the strict sense of the term "appointment". They do not hold a post."

66. The learned counsel for the petitioner has relied upon the judgment *The Direct Recruit Class-II Engineering Officers' Association and others v. State of Maharashtra and others* : (1990) 2 SCC 715, whereas five Judges' Constitutional Bench has held as follows: "2.....The next Rules to which the parties in the present cases have made reference were those made by the resolution dated 21.11.1941 for determination of the seniority of the direct recruits and the promoted officers, containing only two rules out of which Rule 1 admittedly is not relevant for the present purpose. Rule 2 said that in case of officers promoted to substantive vacancies, the seniority would be determined with reference to the date of their promotion to the substantive vacancies. In 1960, detailed rules for recruitment to Class I and Class II Services were framed by a Government resolution dated 29.4.1960. Learned Counsel for the parties have referred to these Rules as the 1960 Rules and have made elaborate arguments with reference to some of the provisions. In place of nomination from the successful students of College of Engineering, Pune as direct recruits, these Rules prescribed for a competitive examination to be held by the Public Service Commission, and introduced a quota system by fixing a ratio of appointments of direct recruits and promotees."By Rule 5 of the 1970 Rules, Class I and Class II Services were redefined and Rule 12(a) declared that the cadre of Deputy Engineers would consist of all the direct recruits, the confirmed Deputy Engineers and the other officers who were officiating as Deputy Engineers on 30.4.1960. 3. During the period 1960-70 adequate number of direct recruits were not available, and a large number of promotees, therefore, had to be appointed to officiate as Deputy Engineers on continuous basis. These appointments were made after following the procedure applicable to regular promotions, including consultation with the Public Service Commission. By Rule 12(b) the strength of the permanent Deputy Engineers was fixed at the total number of (a) the Deputy Engineers confirmed up to the date of commencement of the Rules, (b) direct recruits to the posts of Deputy Engineers appointed till the date of commencement of the Rules, and (c) the Deputy Engineers officiating on 30.4.1960; and it was provided that no fresh appointments in future would be made to this cadre and the vacancies arising would be transferred to the officers holding subordinate posts detailed in the sub-rule in proportions indicated. The learned Counsel for the parties have referred to this cadre as the "frozen cadre". The question of seniority was dealt with in several rules, out of which Rule 33 is important. It said that the seniority list in each cadre in Class I and Class II shall be prepared in two parts-one for the confirmed officers and other for those who were not confirmed; and that the confirmed officers would be treated as senior

to the unconfirmed officers. Since the direct recruits were all appointed against the permanent posts, they were reckoned to be senior to the officiating Deputy Engineers irrespective of the period for which they had been working continuously on the Deputy Engineer's posts. These Rules were amended in 1972, but there was no departure from the main scheme and the principle governing seniority. 5.The further seniority lists were directed to be prepared for the years 1957, 1958, 1959 and 1960 in accordance with the judgment in Patwardhan's case (S.B. Patwardhan and Others. v. State of Maharashtra and Ors.(1977) 3 SCC 399) wherein the seniority of the promotee Deputy Engineers was made dependant on the continuous officiation subject to certain other conditions. 8.The result is that the seniority has to be reckoned on the basis of continuous officiation. ..." 11. Although the claim of the promotees to reckon the seniority according to the continuous officiation was accepted by this Court in Patwardhan's case in 1977, the State Government continued denying them the fruits of the litigation." 13.we are in complete agreement with the ratio decidendi, that the period of continuous officiation by a government servant, after his appointment by following the rules applicable for substantive appointments, has to be taken into account for determining his seniority; and seniority cannot be determined on the sole test of confirmation, for, as was pointed out, confirmation is one of the inglorious uncertainties of government service depending neither on efficiency of the incumbent nor on the availability of substantive vacancies." 20. The quota rule was for the first time introduced by the 1960 Rules. As already mentioned, these Rules were introduced through executive instructions issued by the State Government. The statutory rules which were holding the field earlier did not fix any ratio between the direct recruits and the promotees. Rule 1 of the 1960 Rules which is relevant in this context is quoted below: 1. Appointment to the Bombay Service of Engineers, Class I and Class II, shall be made either- (a) by nomination after a competitive examination held by the Bombay Public Service Commission hereafter called the Commission in accordance with the rules appended, or (b) by promotion from amongst the members of the lower cadres concerned. Provided that the ratio of the appointment by nomination and by promotion shall, as far as practicable, be 75:25." 26. Relying on the observations at page 505H of the judgment in Gupta's case (Bishan Sarup Gupta v. Union of India)reported in [1975] 2 SCR 491, Mr. Tarkunde strenuously urged that even on the assumption that the quota rule in the present cases had, in fact, broken down, it was imperative on the part of the Government to have framed fresh workable rules before promoting the respondents. The learned Counsel for the promotees distinguished the decision, and to our mind correctly, on the ground that there the manner and terms of the appointments made in breach of the quota rule, were widely different from those in the present cases. The special facts as they appear from the other judgment in the Gupta's case reported in [1975] 1 SCR 104 , were stated at page 113E-F thus: It is necessary to remember, however, in this connection that all these officers had been told when promoted that their appointments were on an officiating or ad hoc basis and the question of their

seniority had not been determined. It was thereby implied that orders about seniority could only be passed after the department was in a position to take a decision with regard to the inter se seniority between the promotees and the direct recruits. That being the situation of all these officers, they could hardly contend that the dates of appointments will not be altered for the purposes of determining seniority." 38. As has been stated earlier, the seniority list of the Deputy Engineers for the period up to 1.11.1956 was confirmed in the Patwardharis case. The question of determining the seniority for the subsequent period arose in pursuance of the further decision in this judgment. The 1960 Rules were enforced with effect from 30. 4.1960 which introduced, for the first time, several new provisions including the quota rule. The period from 1.11.1956 to 30.4.1960 was, therefore, separately dealt with by framing the 1978 Rules under Article 309 of the Constitution. In accordance with the decision in Patwardharis case the seniority list of the Deputy Engineers as on 1.11.1956 was declared by these Rules as valid, final and binding, and thereafter the further seniority lists were directed to be prepared for the years 1957, 1958, 1959 and 1960 on the basis of continuous officiation in accordance with the judgment. The petitioner contends that the judgment in Patwardhan's case cannot be interpreted to have struck down the 1941 Rules and the claim of the direct recruits appointed prior to the coming in force of the 1960 Rules must be upheld in view of the provisions of Rule 2 of the 1941 Rules. The 1941 Rules contained only two rules which are quoted below: 1. In the case of direct recruits appointed substantively on probation, the seniority should be determined with reference to the date of their appointment on probation. 2. In the case of officers promoted to substantive vacancies, the seniority should be determined with reference to the date of their promotion to the substantive vacancies provided there has been no break in service prior to their confirmation in those vacancies. 39. The contention is that the seniority ought to be reckoned with reference to the dates of permanent appointment in the cadre. This argument precisely was rejected in Patwardhan's case and we are in complete agreement with the same....." 42.The writ petition states that the petitioners were in Subordinate Engineering service of the former State of Bombay when they appeared at the competitive examination held for direct recruitment and were appointed Deputy Engineers. At the same examination, H.N. Shah, respondent No. 4, who was an officiating Deputy Engineer, also appeared and was appointed a Deputy Engineer as a direct recruit and his name Appeared in the list below the petitioners. After the bifurcation of the two States of Maharashtra and Gujarat in 1960, the petitioners as well as the respondent No. 4 were allocated to the State of Gujarat. In 1969 the petitioner No. 1 and the respondent No. 4 were promoted as Executive Engineers and the name of the respondent No. 4 was again shown lower in the list. It is stated in paragraph 13 of the writ petition that the petitioner No. 2 was temporarily dropped in this promotion order on administrative grounds. It is contended on behalf of the petitioners that these lists correctly placed the respondent No. 4 below the petitioners but the subsequent lists prepared in pursuance of the 1978 Rules wrongly show him as

senior. A counter affidavit on behalf of the State of Maharashtra was filed inter alia denying several allegations in the writ petitions explaining certain circumstances by giving all the relevant materials, and explaining the situation. S.B. Patwardhan, the petitioner in the reported case, also intervened and refuted the claim of the petitioners. The respondent No. 4 has retired in the meantime and has not appeared in this case. The petitioner No. 1, after making a very brief argument, filed written submissions, but since in our view the Patwardhan's case was correctly decided, the State was under a duty to prepare fresh seniority lists for the period 1.11.1956 to 30.4.1960, and this was done after framing the 1978 Rules. We do not find any merit in the challenge to the 1978 Rules, as indicated earlier, and in that view these writ petitions are fit to be rejected, specially as the respondent No. 4 has already retired. 44. To sum up, we hold that: (A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority. (B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted. (C)..... (D)..... (E)..... (F)..... (G)..... (H)..... (I) The posts held by the permanent Deputy Engineers as well as the officiating Deputy Engineers under the State of Maharashtra belonged to the single cadre of Deputy Engineers. (J) The decision dealing with important questions concerning a particular service given after careful consideration should be respected rather than scrutinised for finding out any possible error. It is not in the interest of Service to unsettle a settled position." 67. The respondents in para-39 has specifically contended that the petitioner was not appointed after following the due procedure as prescribed under Service Rules, 1985. The petitioner has referred to the above mentioned judgment in the case of Rajendra Prasad Dwivedi as the same has no application. The judgment has been challenged in the Review Petition No. 188 of 2015 before this Court and the review petition had been entertained by a Division Bench of this Court. It is also pleaded that the Government Order dated 26.08.1982 was inapplicable to the Centralized Services of Development Authorities. 68. It is also pleaded that the case of Direct Recruit Class-II Engineering Officers Association v. State of Maharashtra and others(supra) is inapplicable to the facts and circumstances of this case. It is also contended that in August, 2014, Review Petition No. 575 of 2014 was filed by Shri Sunil Dutt Sharma and two other Assistant Engineers before this Court and prayed for review of judgment and order dated 13.12.2014 as their seniority was being affected due to observations made in the said judgment, which review petition is also pending before this Court. In para-37 it is also pleaded that after decision of special leave petition in limine by the Apex Court, the State Government filed Review Petition No. 188 of 2015 which had been entertained an an interim order had been passed by the Hon''ble Division

Bench on 19.05.2015. 69. The petitioner has not controverted the facts mentioned in para- 35 Clause (xi), para-37 and para-39 of the counter affidavit by stating that what was the status of pendency of the review petition No. 188 of 2015 filed by the State Government and Review Petition No. 575 of 2014 filed by Shri Sunil Dutt Sharma and two others, and whether the interim order dated 19.05.2015 passed by Division Bench in Review Petition No. 188 of 2015 is continuing or not. He has only relied upon the judgment dated 19.08.2011 and modified order dated 09.11.2011 passed by Hon"ble Single Judge and the judgment and order dated 13.002.2014 passed by the Division Bench of this Court. 70. It is relevant to mention here that the Secretary of the Government of U.P. vide letter dated 04.01.2017(Annexure-R.A.1) has conveyed the Vice President of all development authorities that after decision of Special Leave Petition No.13830-13831 of 2014 in compliance of judgment and order dated 13.02.2014 passed by Division Bench of this Court in Special Appeal No. 75 of 2012 and Writ Petition No. 523 (SB) of 2013 and the judgment dated 18.10.2012 passed in Claim Petition No. 470 of 2012, Rajendra Prasad v. State of U.P. and another, one post of temporary Assistant Engineer(Civil) has been created with the approval of Hon"ble Excellency Governor with effect from 18.01.1995 in the pay scale of Rs. 2200-4000/- presently pay scale of Rs. 15600-39100/- (Grade Pay Rs. 5400/-) up to 28.02.2017. 71. Therefore, the petitioner became the member of service on 23.11.2002 and he is unable to substantiate this fact that his appointment was made according to law on adhoc basis against the substantive posts. His appointment was purely on temporary basis for one year initially and until regular selection by U.P. Public Service Commission. Hence, prior to the date of 23.11.2002, he cannot claim his appointment according to law and against the substantive vacancies. Therefore the decision of Direct Recruit Class-II Engineering Officers Association v. State of Maharashtra and others (supra) and order dated 19.08.2011 which was modified on 09.11.2011 passed in Writ Petition No. 3421 (SS) of 1996 and the judgment and order dated 13.02.2014 passed in Special Appeal No. 75 of 2012 does not help in any way to the petitioner. 72. The petitioner has not arrayed Shri Sunil Dutt Shama, Shri Amar Pratap Singh, Shri Anil Kumar Mishra and Shri Sajid Hasan in this writ petition as opposite parties, whereas he has alleged that these junior engineers were wrongly included in the eligibility list, therefore, the writ petition deserves to be dismissed for non joinder of necessary parties. On this ground also the averments made in the writ petition cannot be considered in respect of Shri Sunil Dutt Sharma, Shri Amar Pratap Singh, Shri Anil Kumar Mishra and Shri Sajid Hasan. On this aspect following case laws have been reproduced as under: In the case of State of Bihar and Another. v. P.P. Sharma, IAS and Another. : 1992 Supp. (1) SCC 222 in para 55 of the judgment, the Apex Court held as under :- "55. It is a settled law that the person against whom mala fides or bias was imputed should be imp leaded economize as a party respondent to the proceedings and given an opportunity to meet those allegations. In his/her absence no inquiry into those allegation would be made. Otherwise it itself is violative of the principles of natural justice as it amounts to condemning a person

without an opportunity. Admittedly, both R.K. Singh and G.N. Sharma were not impleaded. On this ground alone the High Court should have stopped inquiry into the allegation of mala fide or bias alleged against them." In the case of Dr. J.N. Banavalikar v. Municipal Corporation of Delhi and another : AIR 1996 SC 326, in para 21 of the judgment, it has been held as under:- "21....Further, in the absence of implemented of the junior doctor who is alleged to have been favored by the course of action leading to removal of the appellant and the person who had allegedly passed mala fide order in order to favor such junior doctor, any contention of mala fide action in fact i.e. malice in fact should not be countenanced by the court." In the case of All India State Bank Officers' Federation and Others. v. Union of India (UOI) and Ors. : JT 1996 (8)SC 550, in relevant portion of the observations made in para 23 by the Apex Court is reproduced as under:- "23.....The person against whom mala fides are alleged must be made a party to the proceeding. The allegation that the policy was amended with a view to benefit respondents 4 and 5 would amount to the petitioners contending that the Board of Directors of the Bank sought to favour respondents 4 and 5 and, therefore, agreed to the proposal put before it. Neither the Chairman nor the Directors, who were present in the said meeting, have been impleaded as respondents. This being so the petitioners cannot be allowed to raise the allegations of mala fide, which allegations, in fact, are without merit." Recently in the case of Federation of Railway Officers Association and Others v. Union of India : AIR 2003 SC 1344, it has been held as under :- "20..... Allegations regarding malafides cannot be vaguely made and it must be specific and clear. In this context, the concerned Minister who is stated to be involved in the formation of new Zone at Hazipur is not made a party who can meet the allegations....." 73. This Court in State of Rajasthan and Others. v. Daya Lal and Others.(supra) and Secretary, State of Karnataka and others v. Umadevi and others (supra), has considered the scope of regularisation of irregular or part-time appointments in all possible eventualities and laid down well-settled principles relating to regularisation and parity in pay relevant in the context of the issues involved therein. 74. On perusal of the facts of decision Direct Recruit Class-II Engineering Officers Association v. State of Maharashtra and others (supra), it is evident that the dispute of this matter was relating to inter se seniority of direct recruits and the promoted officers. The promoted officers were holding substantive posts of their initial appointment. The seniority of the promotee deputy engineers was made depending on the continuous officiation subject to certain other conditions. The promotee deputy engineers who were officiating on these posts were extended benefit of period of continuous officiation. There was no dispute raised or considered by the Hon'ble Supreme Court regarding regularization of deputy junior engineers on the substantive posts. The appointment of deputy engineers were made according to rules framed in the year 1978 and prior to coming into effect of these rules, appointments were made according to 1960 Rules and Rule-33 of 1970 Rules. The appointment of deputy engineers against the prescribed rules was not under consideration in this matter. Likewise, regularization of such deputy engineers

was also not under consideration in this decision. 75. In the present writ petition, the period of uninterrupted officiating service is not under consideration for the promotion of the petitioner on the post of Assistant Engineer because he has only claimed his promotion from the date 18.01.1995 on the basis of BE/ AMIE degree obtained by him under 5% horizontal quota within 50% quota for promoted officers, for which period of his service was not under consideration. 76. The petitioner was never promoted on adhoc basis to officiate on the post of Assistant Engineer, therefore, no benefit can be extended to the petitioner from this judgment, Direct Recruit Class-II Engineering Officers Association v. State of Maharashtra and others(supra), because he was substantially appointed/ regularized on 23.11.2002 when he became member of service. Therefore, prior to 23.11.2002 the petitioner cannot claim promotion from 18.01.1995. 77. It is also pertinent to mention here that for regularization of temporary employee, his initial appointment should be made according to the law/ rules applicable to the service as held by Hon''ble Constitutional Bench of Apex Court in Secretary, State of Karnataka and others v. Umadevi and others (supra) and State of Rajasthan and Others. v. Daya Lal and Others. (Supra) and other exposition of law propounded by Hon''ble Apex Court, which have been mentioned by us at proper place. The petitioner was absorbed and made member of service only after cut off date 23.11.2002. Therefore, he was not considered for promotion with effect from 18.01.1995. 78. In the facts and circumstances, the case laws relied upon by the learned counsel for the petitioner is of no help for him. 79. On the basis of above discussions and the case law mentioned above by us, this writ petition devoid of merits and is liable to be dismissed. 80. Dismissed accordingly. Petition Dismissed.