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**(2013) 05 MP CK 0116**  
**In the Madhya Pradesh High Court**  
**Case No : Writ Appeal No. 655 of 2012**

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| State of M.P. and Another | Vs | APPELLANT  |
| Dr. Ramesh Chandra Dixit  |    | RESPONDENT |

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**Date of Decision :** 14-05-2013

**Acts Referred:**

Constitution of India, 1950 — Article 16, 226, 309

**Citation :** (2013) ILR (MP) 2072 : (2013) 4 MPJR 123

**Hon'ble Judges :** Krishn Kumar Lahoti, Acting C.J.; Vimla Jain, J

**Bench :** Division Bench

**Advocate :** B.S. Banthia with Mr. Sanjay Dwivedi, Government, Kapil Jain and Dr. Parmanand Tiwari, for the Appellant; L.C. Patne, Shri Rajendra Mishra, Shri Abhay Pandey, Shri S.P. Singh, Shri Alok Pathak and Shri Pratyush Tripathi, learned counsel, for the Respondent

**Final Decision :** Dismissed

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## Judgement

Krishn Kumar Lahoti, Actg C.J.

1. This batch of appeals is arising out of a common order passed by the learned Single Judge in a batch of writ petitions dated 4.4.2012. The common question involving in all the appeals is whether the Assistant Professors appointed through emergency appointment in term of Rule 13(5) of the M.P. Educational Service (Collegiate Branch) Recruitment Rules, 1967 are entitled to claim benefit of services rendered by them prior to their regularization for grant of senior/selection grade pay-scale. The history of the case deserves to be referred before considering the contentions of the parties;

(i) That, one Dr. Smt. Seema Raizada alongwith some other Assistant Professors, who were appointed in accordance with the provisions of M.P. Educational Service (Collegiate Branch) Recruitment Rules, 1967 as an emergency appointee, claimed benefit of grant of senior pay-scale and selection grade from the appellants.

(ii) When such benefit was not extended to them, they had filed an original application before the M.P. State Administrative Tribunal, Jabalpur. The Tribunal had allowed the application and directed for considering their case for grant of senior pay-scale and selection grade.

(iii) Against the order passed by the M.P. Administrative Tribunal, the State of M.P. had preferred a writ petition before the High Court which was registered as Writ Petition No. 4863/2001. The Division Bench on 10.8.2005 considering the case held that her appointment on the post of Assistant Professor was made by an order dated 17.12.1986 under Rule 13(5) of the M.P. Educational Service (Collegiate Branch) Recruitment Rules, 1967. The appointment was made after issuance of the advertisement and following the selection process in accordance with the provisions of rules. In the circumstances, the Tribunal had rightly directed to take into consideration her initial date of appointment for the purpose of grant of selection grade pay-scale. The Division Bench had further held that Dr. Smt. Seema Raizada was appointed after due process of selection. Thereafter she was selected by the Public Service Commission. In view of this, her appointment in the year 1986 cannot be said to be fortuitous or adhoc. She was appointed after due process of selection in accordance with the rules, she was entitled for getting the said period counted for the purpose of grant of senior grade pay-scale.

(iv) Against the order passed by the Division Bench, an SLP was preferred before the Apex Court. It was dismissed on the ground of delay but the legal question was left open to be considered at a subsequent stage.

(v) After following the law laid down in the case of Dr. Smt. Seema Raizada, various other cases were filed before the M.P. State Administrative Tribunal. After closure of the Tribunal, those cases were transmitted to the High Court of M.P. and other petitions which were filed under Article 226 of the Constitution of India were decided by a common order in Writ Petition No. 807/2007(s) Dr. Sandhya Prasad Vs. State of MP dated 13.7.2007. Against the order passed by the learned Single Judge in Dr. Sandhya Prasad and other cases, writ appeals were filed by the State Government. The Division Bench reconsidered the matter and by a common order passed on 11.2.2010 decided the writ appeals and dismissed them following the law laid down in the case of Dr. Smt. Seema Raizada. The Division Bench had directed to extend the benefit as was extended in the case of Dr. Smt. Seema Raizada.

(vi) Thereafter, various writ petitions were filed before the Single Bench of this Court. Those matters were challenged before the Division Bench in different appeals. Ultimately all the matters travelled to the Apex Court on the appeals filed by the State of M.P. The Apex Court by a common order in State of Madhya Pradesh and Others Vs. Satyavrata Taran, , considered the matter at length and decided the appeals with following directions:-

31. We tried to wade through voluminous materials in the form of schemes,

government orders and circulars produced by both the learned counsel appearing for the parties. More we tried to delve into the matter, more and more murkier facts, which we call normally Pandora's Box, started emerging. Going through these documents could have been done by us, but since those documents were not even produced by way of affidavit and since the learned counsel on the opposite side had no knowledge of those documents, we have thought it fit to remand these matters back to the High Court for fresh disposal in accordance with law, by granting liberty to both the parties to produce all these documents which they tried to rely upon before us.

32. We are also informed by both the learned counsel that it would be in the interest of all the parties that these petitions be heard before one Bench so that the possibility of divergent opinion(s) from the High Court could be possibly avoided. The expression of desire appears to be reasonable and, therefore, we accept the same.

33. In that view of the matter, we allow the appeals, set aside the orders passed by the High Court in all these matters and remand the matter back to the High Court for its fresh consideration in accordance with law. We also give liberty to both the parties to place on record all the documents on which they intend to rely in support of their case including the manner, mode and the source of appointment of each of the Assistant Professors.

34. We also request the learned Chief Justice of the Madhya Pradesh High Court to assign all these matters to the Principal Bench itself so that the matters could be finally settled by one Bench, instead of two or three Benches taking different views on the same set of facts and on the questions of law.

35. Since the matters were pending for some time, we request the learned Chief Justice to either take up the matters by himself or assign it to an appropriate Bench and request that Bench to dispose of the appeals at the earliest. We clarify that we have not expressed any opinion on the merits of the case. Ordered accordingly.

(vii) Thereafter the matter was placed before the Division Bench and the Division Bench on 7.2.2012 in W.A. No. 599/2008 & others decided the matter by an order which reads thus:-

14. We may point out here that the controversy in the case appears to be very limited. The M.P. Educational Service (Collegiate Branch) Recruitment Rules, 1990 have been framed by the governor of M.P. under Article 309 of the Constitution of India. Under these Rules eligibility for promotion to senior pay scale and thereafter to selection grade pay scale require completion of certain years of service after regular appointment.

15. The question is about interpretation of the phrase "after regular appointment" as used in the 1990 Rules. The State contends that regular appointment means appointment after selection by the Public Service

Commission, while writ petitioners contend that these words mean initial emergency appointment under rule 13(5) of the M.P. Educational Service (Collegiate Branch) Recruitment Rules, 1967. The normal connotation of the phrase "regular appointment" would mean an appointment which would under normal circumstances continue till the date of superannuation. On that connotation, "regular appointment" would exclude emergency appointments under rule 13(5) of the 1967 rules corresponding to rule 15 of the 1990 Rules which are subject to the condition that the service of these emergency appointees would be terminated as soon as select list prepared by the Public Service Commission is available. Further, no circular, government order or administrative instruction whether of the State Govt. or of the UGC can over ride the Rules made under Article 309 of the Constitution of India. However, because the parties wish to file documents which have been permitted by the order of the Supreme Court in express terms, therefore the learned single Judge hearing the matter will be free to take an independent decision without being influenced by any observation made in this order.

16. We have only pinpointed the controversy for the benefit of the parties, so that the precious time of the Court as well as of the parties may be saved by advancing only relevant arguments, instead of digressing as has been done during the arguments before us. For example it was wholly unnecessary to argue whether the emergency appointments were ad-hoc or not. What is relevant is whether they can be said to be "regular appointments" within the meaning of that phrase as used in the 1990 Rules. Again it is wholly irrelevant to argue that in some cases the State has acted otherwise. Assuming that ten illegalities have been committed by the respondent, it will not justify a mandamus to the respondent to commit the same illegality again. Similarly the long drawn arguments based upon the language used in the emergency appointment orders or the subsequent "regularisation" (appointment?) orders post selection by the PSC also are irrelevant. No officer of the govt. by the language deployed in appointment orders can over-ride the statutory Rules made under Article 309. There is no estoppel against statute.

17. Normally, the safest approach to interpreting a legislation is to try and decipher the purpose for which the phrase under consideration has been put there.

18. In the aforesaid circumstances, all these writ appeals are allowed and the matters are remanded for fresh decision by the learned single Judge.

19. Alongwith this bunch of writ appeals, W.P. No. 24503/2003 is also listed. This writ petition is for claiming reliefs similar to those claimed in the writ petitions out of which the connected appeals arose.

20. Like other writ petitions, this writ petition would also be cognizable by a learned Single Judge, and it will therefore also be heard alongwith the bunch by the learned Single Judge nominated for the purpose.

(viii) Thereafter the matter was heard and decided by the learned Single Judge. The learned Single Judge after considering the controversy, interpreting rule 13(5) of Rules of 1967, various circulars issued by the State Government allowed all the writ petitions and held that the appointment made under Rule 13(5) was a regular appointment, after following due procedure as was envisaged under the rules and directed the appellants to consider the case of the respondents for grant of senior scale/selection grade after treating the services rendered by the respondents from the initial date of appointment, as emergency appointees, as a regular appointment for the purpose of conferring the benefit of senior pay-scale and selection grade. The matter was directed to be placed before the appropriate screening committee and on the recommendations of the screening committee, the benefit should be extended retrospectively, with effect from the date of eligibility of each of the respondents. This order of the learned Single Judge is under challenge in these appeals.

2. Shri B.S. Banthia, learned counsel appearing in the matter argued:

(a) That, as per rule 13(5) of the M.P. Educational Services (Collegiate Branch) Recruitment Rules, 1967, all the appointments were made as emergency appointment and until and unless these appointees are confirmed by the PSC as is required under rule 12, they cannot be treated as regular appointees. He has also referred various provisions of 1967 and 1990 Rules to point out that before the Rules of 1990, there was no provision of senior pay-scale and the State Government has rightly issued an order dated 24.12.1998 and thereafter another order dated 25.11.2005 directing the regularization of services of all the respondents, so the aforesaid orders were fully justified.

(b) That under rule 13(5) of the Rules of 1967, all the respondents were appointed on an emergency basis. These rules remained in force till 1990 and thereafter recruitment Rules of 1990 came into force. Under the rules of 1967, there were two methods of appointment, one by regular appointment which was prescribed in rule 7 and the procedure was given in rule 12. These were the regular appointees. Thereafter as it was not possible to make regular appointment in absence of a select panel of M.P. P.S.C., so emergency appointments were made as a stop-gap arrangement, without following selection procedure of regular appointment, by inviting applications and appointing them on merit basis in accordance with the marks obtained in Master Degree. The respondents were given conditional emergency appointment.

(c) In rule 13(5), there is a proviso which provides that the appointees would be liable to be terminated the moment the panel of Public Service Commission is available for these posts.

3. The respondents supported the order and in nut-shell submitted that the appointment of respondents was made after following due process which was at par with the regular appointment and under rule 5 any person recruited to the service in accordance with the provisions of Rules of 1967 became the member

of service. It was submitted that all the respondents were members of the service, recruited under the Rules and were entitled for the benefit and the order passed by the learned Single Judge is in accordance with law and needs no interference by this Court.

4. Shri Rajendra Mishra, learned counsel appearing for respondents showed us an advertisement issued on 8.11.1999 by which it was advertised that the aforesaid emergency appointment was temporary but was on vacant posts and subject to recruitment by the Public Service Commission and if selected by the Public Service Commission, then to continue with the service. It was submitted by him that all the appointments were made on vacant posts and was subject to selection by the PSC. It is submitted by him that the order passed by the writ Court is in accordance with law.

5. The learned Single Judge considering the controversy by the impugned order held thus:-

42- The criteria for considering a claim for grant of senior payscale or selection grade and the criteria for granting seniority to a person are different. For the purpose of grant of senior pay scale once it is seen that induction of an employee to the department is in accordance to a statutory prescribed mode contemplated under the Rules, then it has to be held to be a regular appointment even if on emergency basis. An emergency appointment is one of the methods for induction into the department both as per the Rules of 1967 and the Rules of 1990 and, therefore, respondents cannot contend that it is not a regular appointment. The meaning of the word regular and the import of the same clearly contemplates that anything done as per prescribed norms of the Rule and procedure is regular and, therefore, I am of the considered view that induction of the petitioners into the service after following the procedure contemplated under Rule 13(5) of the Rules of 1967 or Rule 15 of the Rules of 1990 is a regular appointment to the service and such an appointment qualifies the employee to be considered for grant of senior pay scale.

43- In the Rules of 1967, under Rule 7 the methods of recruitment are indicated. In sub-rule (1), three modes of recruitment are indicated under sub-clause (a), (b) and (c). Thereafter, in sub-clause (3) and (4) of Rule 7, the following stipulations are contained:

(3) Subject to the provision of these rules, the method or methods of recruitment to be adopted for the purpose of filling any particular vacancy or vacancies in the service as may be required to be filled during any particular period of recruitment and the number of persons to be recruited by each methods, shall be in accordance the Schedule No. II. But in case where the percentage as fixed in the Schedule cannot be strictly applied, preference will be given to Departmental candidates for promotion subject to the condition that suitable and qualified candidates are available in the Department otherwise the posts would be filled by direct recruitment irrespective of the percentage fixed for

the purpose in each case.

(4) Notwithstanding anything contained in sub-rule (1), if the opinion of the Government or the exigencies of the service so require, the Government may, after consulting the Commission, adopt such methods of recruitment to the Service other than those specified in the said sub-rule as it may, by order issued in this behalf, prescribe.

It is clear from sub-clause (4) thereof that notwithstanding anything contained in sub-rule (1), power is conferred on the Government if exigency required to adopt such methods of recruitment to the service as may be specified by orders to be issued in this regard. Similar provisions are contained in Rule 6 sub-rule (3) and (4), of the Rules of 1990. The method of recruitment, therefore, contemplated under Rule 13(5) of the Rules of 1967 and Rule 15 of the Rules of 1990 are nothing but the modes of recruitment approved by the State Government in exercise of the powers conferred on it under the Rules framed under Article 309 of the Constitution i.e. sub-rule (4) of Rule 7 of the Rules of 1967 and Rule 6(4) of the Rules of 1990 and is infact a prescribed method of recruitment as contemplated under the statutory rules. It was said that the method of recruitment contemplated under Rule 7(4) or Rule 6(4) of the Rules of 1967 and the Rules of 1990 does not include the process of appointment contained in Rule 13(5) or Rule 15(5), this argument of the learned counsel for the State cannot be accepted. In the provisions pertaining to method of recruitment as contemplated under Rule 7 of the Rules of 1967 and Rule 6 of the Rules of 1990, an exemption is carved out in sub-rule (4) which contemplates that notwithstanding anything contained therein above, the State Government is given power to formulate procedure for recruitment, as may be required. It is, therefore, clear that sub-rule (4) of both Rules 7 and Rule 6, of the Rules of 1967 and the Rules of 1990, empowers the State to formulate different modes of recruitment other than provided in the Rules itself. If that be so, it can easily be construed that the Rules framed by the State Government under Rule 13(5) of the Rules of 1967 or Rule 15 of the Rules of 1990 is also a method of recruitment enacted by the State Government by exercising the powers conferred under subrule (4) of Rules 7 and 6, as the case may be and, therefore, the method of recruitment contemplated under Rule 13(5) and Rule 15(5) are also the method of recruitment to the service.

44- That apart, the provision for grant of senior scale and selection grade was incorporated by the UGC in the Scheme formulated by it in the revision of pay scale in November 1988. It is seen that prior to November 1988, initial induction into the department was made in the cadre of Lecturers. Thereafter, there was an avenue for promotion from Lecturer to the post of Assistant Professor and thereafter to the post of Professor and Principal. However, with effect from the year 1988, the post of Lecturers were abolished, inductions were made directly into the post of Assistant Professor and in the cadre of Assistant Professor a different pay scale and senior scale was incorporated and while indicating the

provision for grant of selection grade and senior scale, a provision was incorporated by the UGC itself by stipulating certain conditions, including the condition of completing 8 years of service after regular appointment. The words "regular appointment" as used by the UGC is explained not only by the UGC, but also by the State Government in the circulars issued from time to time, particularly in the Circulars dated 27.11.1990 and 12.2.1992. The UGC clarified the notification issued by it and the clarification for counting of past services was also incorporated in these circulars. If the circulars issued by the UGC and adopted by the State Government are taken note of, it would be seen that in all these circulars certain conditions have been incorporated indicating the manner in which the service of 8 years is to be calculated. One such circular issued by the UGC is 27.11.1990 and the following stipulations are made in the said circular in this regard:

1. Previous service without any break as a lecturer or equivalent in a University, College, National Laboratory or other scientific organizations (CSIR, ICAR, DRDO, UGC etc) as a UGC Research Scientist should be counted for placement of lecturers in Senior Scale/Selection Grade provided that:-

- (a) the post was in an equivalent grade/scale of pay as the post of lecturer;
- (b) the qualification for the post were not lower than the qualification prescribed by UGC for the post of lecturer;
- (c) the lecturer concerned possessed the minimum qualifications prescribed by the UGC for appointment as lecturer;
- (d) the post was filled in accordance with the prescribed selection procedure as laid down by the University/State Government;
- (e) the appointment was not adhoc or in a leave vacancy or less than one year duration.

No distinction should be made with reference to the nature of management of the institution where previous service was rendered (private/local body/Government) if the above criteria are satisfied.

45- Similar circulars were issued by the Additional Secretary to the UGC on 25.4.1988 and even the State Government in the circulars issued on 12.2.1992, has incorporated such a provision. In the UGC Regulation on minimum qualification published in the Gazette of India on 30.6.2010 also under Clause 10, a provision for counting of past service for direct recruitment and promotion is indicated and if these provisions are taken note of, it would be seen that previous regular service includes recruitment in accordance to any prescribed selection procedure as may be laid down. If the circulars issued by the State Government in this regard are taken note of i.e... the Circular dated 12.2.1992, it would be seen that these circulars have incorporated the provision which is contained in the circulars dated 27.11.1990 and 25.12.1998 issued by the UGC and the conditions to be fulfilled are those reproduced hereinabove as Clauses

(a), (b), (c), (d) and (e). The five conditions to be fulfilled are that the post to which appointment is made is in an equivalent grade or scale of pay on the post of Lecturer, which is now Assistant Professor. This condition is fulfilled in the case of the petitioners, as the appointments are on the post of Lecturer/Assistant Professor as is notified in the Schedule to the Rules, with equivalent pay scale and grade. As far as clause (b) is concerned, the qualification is also the same as is prescribed by the UGC for the post of Assistant Professors and such a condition is already stipulated in Rule 13(5) and Rule 15. As far as clause (c) is concerned, the person concerned possessed the minimum qualification prescribed by the UGC and these are the conditions stipulated in Rule 13(5) and Rule 15 also. As far as clause (d) is concerned, the post is filled in accordance to a election procedure as laid down by the State Government in the Recruitment Rules of 1967 and 1990. As far as clause (e) is concerned, the appointment is not on adhoc basis nor is on a leave vacancy for a period of less than one year. It is, therefore, clear that in the case of the present petitioners, all the conditions stipulated in the circulars issued by the UGC and the State Government for treating the petitioners as a regular appointment is fulfilled.

46- If the circulars issued by the State Government and the UGC are scanned, it would be seen that what is prohibited or what can be termed as an appointment which is not a regular appointment is actually an adhoc or stop gap arrangement undertaken dehors the Recruitment Rules or a process of appointment contrary to the mandate of Article 16 of the Constitution. All other appointments which do not fall in the category of adhoc or stop gap arrangement or which is not hit by the provisions of Article 16 of the Constitution would come within the purview of a regular appointment as is clear from the circulars issued in this regard. In the circular issued by the UGC on 25.12.1988, the position is clarified and the Commission has clearly stated that all services rendered in adhoc capacity should be counted for past service for placement in the senior scale/selection grade provided the three conditions mentioned herein are fulfilled. The conditions are (a) the adhoc service is for more than one year; (b) the incumbent was appointed on the recommendations of a duly constituted Selection Committee; and, (c) the incumbent was selected to the permanent post in continuation to the adhoc service without any break. If these three conditions are fulfilled the appointment and the service has to be counted for the purpose of placement in senior scale. In the case of all these petitioners even though their appointment is not an adhoc appointment, but their emergency appointment is in a better footing than an adhoc service and is for a period of more than one year duration. They were also appointed on the basis of recommendation of a duly constituted Selection Committee. They were selected to the permanent post as sanctioned in the Recruitment Rules and have continued without any break.

47- That being so, all the conditions stipulated in the circulars issued by the UGC and the State Government are fulfilled by the present petitioners and, therefore, there is no reason for denying the benefit to the petitioners. Infact the meaning of the word "regular appointment" is clarified by the UGC itself in its circulars

dated 27.11.1990 and 25.12.1998 and as the petitioners fulfilled all the requirement of these circulars, the period of emergency appointment is to be counted for the purpose of their placement in the senior scale/selection grade. From the reasons already indicated hereinabove, even on a bare interpretation of the circulars issued by the UGC and adopted by the State Government, the petitioners are entitled to the benefit.

6. To appreciate the rival contentions of the parties, it would be appropriate if an important fact is referred in the matter. On 25.11.2005, an order has been issued by the State Government that because of ban on the appointments, for arranging teaching, with the condition that on getting first opportunity for selection from the Public Service Commission, the State Government had made emergency appointments. The Assistant Professors who were appointed on emergency basis got an opportunity from the Public Service Commission. All the emergency teachers who could not be selected from the Public Service Commission were considered by the State Government sympathetically and the State Government had decided to regularize them. Accordingly, the non-selected emergency Assistant Professors were regularized with effect from 24.12.1998. The aforesaid order has been issued in respect of almost all the Assistant Professors. Now the only question remains whether all the respondents were entitled to be treated as regular appointees from the date of their initial appointment because for the period after 24.12.1998, there is no dispute in the matter that they are now regularized. Before proceeding further, it would be appropriate if the relevant rules of the M.P. Educational Service (Collegiate Branch) Recruitment Rules, 1967 and 1990 are referred thus:-

Under Rules of 1967

4. Scope and application-Without prejudice to the generality of the provisions contained in the Madhya Pradesh Civil Services (General Conditions of Service) Rules, 1961, these rules shall apply to every member of the service.

5. Constitution of the Service-The service shall consist of the following persons namely:-

(1) Persons who at the commencement of these rules are holding substantively the posts specified in the Schedule I;

(2) Persons recruited to the service before the commencement of these rules; and

(3) Persons recruited to the service in accordance with the provisions of these rules.

7. Method of recruitment

(1) Recruitment to the service, after the commencement of these rules, shall be by the following methods, vis-

(a) by direct recruitment by selection;

(b) by promotion of members of the Madhya Pradesh Educational Collegiate Service from lower post cadre to higher post in the cadre;

(c) by transfer of persons who hold in a substantive capacity such posts in such services as may be specified in this behalf.

(2) The number of persons recruited under clause (b) or clause (c) of sub-rule (1) shall not at any time exceed the percentage shown in the Schedule II of the number of duty posts.

(3) Subject to the provisions of these rules, the method or modes of recruitment to be adopted for the purpose of filling any particular vacancy or vacancies in the service as may be required to be filled during any particular period of recruitment and the number of persons to be recruited by each methods, shall be in accordance with the Schedule No. II. But in case where the percentage as fixed in the Schedule cannot be strictly applied, preference will be given to Department candidate for promotions subject to the condition that suitable and qualified candidates are available in the Department otherwise the posts would be filled by direct recruitment irrespective of the percentage fixed for the purpose in each case.

(4) Notwithstanding anything contained in sub-rule (1), if in the opinion of the Government the exigencies of the Service so require, the Government may, after consulting the Commission, adopt such methods of recruitment to the Service other than those specified in the said sub-rule as it may, by order issued in this behalf, prescribed.

8. Appointment to the Service- (1) All appointments to the Service after the commencement of these Rules shall be made by the Government and no such appointment shall be made except after selection by one of the methods of recruitment specified in Rule 7. 13. List of candidates recommended by the Commission:-

(5) Emergency appointments:- If Commission's panel of selected candidates is not available, the posts may be filled by emergency appointments in the following manners:-

(a) an advertisement shall be issued by Government;

(b) Applications for emergency appointments shall be submitted in the form prescribed in Schedule V.

(c) Applications received shall be registered and tabulated according to the following criteria:-

The names will be arranged in each sub-category according to the marks secured by the candidates at the M.A./M.Sc./M.Com. Examination.

Provided if and when Public Service Commission panel for these subjects is available, these teachers will be liable to be removed without notice.

Under Rules of 1990

3. Scope and application-Without prejudice to the generality of the provisions contained in the Madhya Pradesh Civil Services (General Conditions of Service) Rules, 1961, these rules shall apply to every member of the Service.

4. Constitution of the Service.- The Service shall consist of the following persons, namely:-

(1) persons who at the commencement of these rules are holding substantively or in officiating capacity the posts specified in Schedule-I

(2) persons recruited to the Service except on emergency and adhoc basis before the commencement of these rules; and

(3) persons recruited to the Service in accordance with the provisions of these rules

14. Recruitment by absorption- (i) The absorption of Principals, Professors, Asstt. Professors Librarian and Sports Officers of non-government college taken over by the Government will be made through Screening Committee, after examining every case and on its recommendations to the Government. The Committee shall be comprising of the following members:-

(a) Chairman, Public Service Commission or a member of the Commission, nominated by the Chairman

(b) Principal Secretary/Secretary, Higher Education

(c) Commissioner, Higher Education, Madhya Pradesh

(d) Two Principals of Government Post Graduate Colleges, nominated by the Government.

(ii) The Screening Committee shall recommend the cases referred to it for absorption to appropriate posts on the following basis:-

(A) All these persons, who were recruited as a regular appointee in the private colleges taken over by the Government according to the provisions given in the college code of the concerning universities prior to the commencement of the Madhya Pradesh Uchcha Shiksha Anudan Ayog.

(B) No such person shall be absorbed who is recruited after the commencement of the Madhya Pradesh Educational Service (Collegiate Branch) Recruitment Rules, 1967 and does not fulfil the minimum requirements prescribed in the said rules.

(C) No person shall be absorbed if any time in the past he or she was removed or dismissed from Government or any other service for proved misconduct and/or criminal offence.

(D) No person shall be absorbed in Government Service if he or she has attained

the age of superannuation according to the Government rules in force at the time of absorption.

(E) No person appointed as or holding the post of a Registrar, or a Librarian or a Sports Officer, in a non-government college taken over by the State Government, shall be absorbed in government Service, unless at the time of appointment, such person answers such minimum requirements or holds such qualifications as may be laid down by the State Government by an order in writing.

(F) No person shall be absorbed in Government Service whose appointment is not approved as a regular appointment by Madhya Pradesh Uchcha Shiksha Anudan Ayog or the University as the case may be.

(iii) (A) No person shall be absorbed in a higher post in Government Service from the post on which he was working prior to the take over of the college by Government.

(B) for being absorbed as Principal of a Degree College, a person working as Principal of a college taken over by Government shall, in addition to the other conditions prescribed under this Rule have a minimum of 14 years teaching experience out of which 3 years teaching experience shall pertain to teaching of post graduate classes and two years teaching experience as a Professor, for absorption to the post of Principal Post graduate College, a further experience of two years of working as Principal of a Degree College shall be necessary.

(iv) The Screening Committee, after taking into consideration the relevant provisions of this rule shall make suitable recommendations to Government. After the recommendations of the Committee are approved by Government, the absorption orders of the concerning persons will be issued by Government according to the recommendations of the Committee.

(v) A person absorbed to a particular post shall get his seniority from the date the college was taken over.

(vi) No leave shall be permitted to be carried forward by a person working in a non-government college on his absorption in Government service. However, if such a person pays the leave salary contribution in respect of the service rendered in a non-government college, he shall be permitted to carry forward the leave so earned subject to the restrictions and maximum limits prescribed in the Madhya Pradesh Leave Rules.

(vii) No person absorbed into Government service under the provision of this Rule shall by virtue of the fact that he was earlier confirmed in service by the non-government college claim as of right to be confirmed in Government service. Confirmation of such persons shall be done in accordance with the Government rules in force from time to time.

(viii) The provisions of these rules shall be and shall always be deemed to have come into force with effect from the 1st January, 1971.

(ix) The Principal, Professor, Asstt. Professor, Librarian and Sports Officer of the non-government college, taken over by the Government whose appointments were approved as a regular appointment by Madhya Pradesh Uchcha Shiksha Anudan Ayog or the University, as the case may be, but are rejected by the Screening Committee for their absorption in Government Service due to any reason, will continue on the post, they held on adhoc and temporary basis in dying cadre, but will not get any benefit of seniority, promotion, annual increments and revision of pay-scale in Government Service as such.

15. Emergency Appointment.- If commission's panel of selected candidates is not available for the post of Asstt. Professors, Librarians and Sports Officers, the posts may be filled by emergency appointments in the following manner:-

(A) An advertisement shall be issued by the Government.

(B) For emergency appointments to the post of Asstt. Professor, Librarian and Sports Officers the educational qualifications will be the same as shown in Schedule-III for these posts.

(C) Application for emergency appointment shall be submitted in the form prescribed in Schedule-V.

(D) Application received shall be registered and tabulated according to the following norms in order of merits:-

(i) Percentage of the Marks obtained at Degree level shall be the basis of allotment of marks out of 40 marks.

(ii) Percentage of the Marks obtained at Post Graduate level shall be the basis of allotment of marks out of 50 marks.

(iii) 5 marks for M.Phil degree and:

(iv) 5 marks for Ph.D. Degree

A merit list prepared subjectwise in the above manner shall be used for the filling the available vacancies in the serial order for the emergency appointments. However, all such candidates appointed on the emergency basis shall be subject to the condition, that their services will be terminated as soon as a selection list prepared by Public Service Commission is received.

7. Rule 5(3) of the Rules of 1967 provides that service namely M.P. Educational Service Technical Branch shall consist all the persons recruited to the service in accordance with the provisions of these Rules. Rule 8 provides that all appointments to the service after the commencement of these rules shall be made by the Government and no such appointment shall be made except after selection by one of the methods of recruitment as specified in rule 7. Rule 7(4) provides that notwithstanding anything contained in sub-rule (1) if in the opinion of the Government, the exigencies of the service so require, the Government may, after consulting the Commission, adopt such methods of recruitment to the

service other than those specified in sub-rule (1) as it may, by an order issued in this regard, prescribed. Rule 13(5) provides that if panel of selected candidate by the Commission is not available, the posts may be filled by emergency appointments in the prescribed manner; namely, an advertisement shall be issued by the Government, applications for emergency appointments shall be submitted in the form prescribed in Schedule V and the applications received shall be registered and tabulated according to the criteria prescribed in the table. Proviso of sub-rule (5) provides that if and when Public Service Commission Panel for these subjects is available, these teachers will be liable to be removed without notice. All the respondents were appointed before coming into force of Rules of 1990. Under the Rules of 1990, rule 4 provides that the service shall consist of the persons namely; persons recruited to the service except on emergency and adhoc basis before commencement of these rules. Rule 15 of Rules of 1990 again provides for emergency appointment which is referred hereinabove. Rule 4(2) specifically provides that the persons recruited to the service except on emergency and adhoc basis before commencement of these rules shall be persons of service. If we see the provision of M.P. Regularisation of Ad-hoc Appointment Rules, 1986, the following provisions may be referred which read as under:-

2. Overriding effect-These rules shall have effect notwithstanding anything to the contrary contained in any other rules or orders on the subject for the time being force.

4. Scope and application-These rules shall apply for regularization of ad-hoc appointments made on the post and in the department mentioned in the Schedule prior to the 31st March, 1986.

Aforesaid provisions specifically provide that these rules shall be applicable for regularization of the adhoc appointments made on the posts in the department prior to 31.3.1986. The M.P. Civil Services (General Conditions of Services) Rules, 1961 also deserves to be referred. Rule 12(4) provides as under:-

12. Seniority.-

..

(4) Seniority of Adhoc employees.-(a) A person appointed on adhoc basis shall not get any seniority till the regularization of his services.

(b) If a person is appointed on adhoc basis by substantially following the procedure laid down by the Recruitment Rules and the appointee continues in the post uninterruptedly till the regularization of his service in accordance with the rules, the period of officiating service shall be counted for seniority.

Aforesaid provision specifically provides that if a person is appointed on adhoc basis by substantially following the procedure laid down by the Recruitment Rules and the appointee continues in the post uninterruptedly till regularization of service in accordance with rules, the period of officiating service shall be counted

for seniority.

8. Now in the light of the aforesaid, recruitment under the Rules of 1967 may be looked into. Rule 13(5) of Rules of 1967 provides provision for emergency appointment. The difference between rules 12 and 13(5) is only in respect of interview by the Commission. For ready reference, we quote rule 12 of Rules of 1967 which reads thus:-

12. Direct recruitment by selection-

(1) A selection for recruitment to the service shall be held at such intervals as the Government may in consultation with the Commission, from time to time determine.

(2) The selection of candidates for the service shall be made by the Commission after interviewing them.

(3) 15 percent and 18 percent of the available vacancies for direct recruitment plus the carried forward vacancies from the last occasion, if any, shall be reserved for candidates who are members of the Scheduled Castes and Scheduled Tribes respectively.

(4) In filling the vacancies so reserved candidates who are members of the Scheduled Castes and Scheduled Tribes shall be considered for appointment in the order in which their names appear in the list referred to in rule 13 irrespective of their relative rank as compared with other candidates.

(5) Candidates belonging to the Scheduled Castes or the Scheduled Tribes, declared by the Commission to be suitable for appointment to the service with due regard to the maintenance of efficiency of administration may be appointed to the vacancies reserved for the candidates of the Scheduled Castes or the Scheduled Tribes as the case may be under sub-rule (3).

(6) If a sufficient number of candidates belonging to the Scheduled Castes and the Scheduled Tribes are not available for filling all the vacancies reserved for them, the remaining vacancies shall be filled from among other candidates and an equivalent number of additional vacancies shall be reserved for candidates belonging to the Scheduled Castes and the Scheduled Tribes for the next selection in the manner indicates in Rule 12(3) above;

Provided that if a sufficient number of suitable candidates is not available in the next selection to fill all the reserved vacancies, including the additional vacancies or such of them as are not filled, shall lapse.

9. Aforesaid provision only provides that if after the interview, a list is issued by the Commission, the same persons shall be treated as direct recruitment while emergency appointment also provides a complete procedure except interview by the Commission. Except this, there is no difference with the emergency appointment. Aforesaid emergency appointment relates to appointment against the posts after an advertisement, inviting applications, examining the requisite

qualifications for the posts and proper scrutiny of the applications. Meaning thereby that except interview by the Commission, entire procedure for recruitment as emergency appointment was followed.

10. Now the question remains whether all the respondents who have now been regularized with effect from 24.12.1998 are entitled to the same benefit which have been extended to other emergency appointees who had cleared PSC and who have been granted regular appointment in the regular pay-scale. The respondents could not clear the PSC, but they were not discontinued from service as sufficient number of suitable candidates for PSC were not available. However, they were possessing requisite qualifications for the posts held by them and they were discharging their duties in accordance with rules.

11. Considering the aforesaid situation, the General Administration Department of the State of M.P. by letter dt. 3.2.1997 sought concurrence of the M.P. Public Service Commission to regularize the service of the Assistant Professors appointed on emergency basis. The M.P. Public Service Commission in response to the letter had granted its concurrence. Thereafter, the State Government had taken a policy decision on 21.8.1998 to regularize the service of these emergency appointees. At this juncture it would be appropriate if the decision of the Apex Court in State of M.P. Vs. Arvind Kumar & another, Civil Appeal Nos. 2292-2333/92 dated 28.4.1992 is referred which reads thus:-

In this batch of appeals by the State of Madhya Pradesh, a Memorandum of Understanding signed by Shri S.N. Dhruva, Deputy Secretary, Government of Madhya Pradesh, Department of Higher Education, Bhopal, has been placed before us. This is as a result of some deliberations which took place on the last date of hearing. The memorandum is as follows:-

1. That a total No. of 1366 emergency appointments were made during the year 1986 to 1989. Appointees were required to present themselves before P.S.C. on first available opportunity as per condition of appointment as also the Recruitment Rules of the Deptt. The P.S.C. advertisement prescribed maximum age limit of 39 years for emergency appointees as against 31 years.

2. 82 such emergency appointees were not eligible because of the subsequent amendment in requirement of 50% marks at Graduation level, but out of these 27 persons appeared by virtue of order dated 27.11.90 passed by S.A.T.

3. The remaining candidates out of the ineligible 82 appointees would be dealt with under Special dispensation, as the Supreme Court may order, so that their interest are not adversely affected.

4. Those candidates who have appeared in the P.S.C. examination but withdrawn their candidature (are about 850) subsequently pursuant to the order of the SAT would be allowed to appear in the interview to be conducted by the PSC, if they are declared successful in the written test.

5. Those emergency appointees who were eligible under the rules and still did

not choose to respond to the Public Service Commission advertisement, do not merit any consideration. They were offered adequate opportunity to participate in the selection process. They having decided not to offer themselves as candidates, the Govt. does not consider it proper to force them into this. If, however, this Hon''ble Court directs otherwise the State Government will comply with the directions of this Hon''ble Court.

We have discussed this matter further with learned counsel on both sides. Some clarifications and amendments are required. Paragraphs 2 and 3 would require the first clarification. The 27 persons, who are referred to in paragraph 2, who had appeared in the written test by virtue of order dated 27.11.90 passed by the State Administrative Tribunal, would now be treated as ineligible and their results would not be declared. They would form back as part of the 82 who were ineligible and would be entitled to the benefit mentioned in para 3. The second clarification/amendment is with regard to paragraph 5 inasmuch as the Special dispensation would be open not only to 82 appointees afore-referred to but also to other similarly situated appointees who had chosen not to respond to the advertisement of the Public Service Commission thinking that they were ineligible. Thus the Special dispensation would be open to all. The third and the last clarification is required in paragraph 4, inasmuch as candidates numbering about 850, who are eligible but have pursuant to the orders of the State Administrative Tribunal, subsequently made applications to withdraw their candidature, would now not be allowed to withdraw, and if they are declared successful in the written test, they would be called for interview.

The terms of the Memorandum as clarified/amend are acceptable to the Respondents through their learned counsel. Therefore, in order to give it proper legal effect, we grant special leave in all these cases and allow the appeals by substituting the above final Understanding as order in place of the order passed by the Tribunal.

If in future the Government chooses to regularize the service of the left-outs who have to be dealt with by the special dispensation, this order shall not stand in their way. The special dispensation is clearly understood between the parties to include: (a) relaxation of age; (b) relaxation in the percentage of marks at the graduate level, and (c) quick settlement of the issue to obviate hardship.

12. It appears that as a result of the aforesaid decision, various Assistant Professors were regularized by the appellants by issuing regularization order dated 24.12.1998. The Apex Court in S.K. Chopra & others Vs. State of M.P. & others 1997 MPLSR 61 considering similar position held thus:--

Mr. P.P. Rao, learned counsel appearing for the appellants has contended that the appointment of the appellants have not been made under the rules and as such they are entitled to the fixation of their seniority in the cadre of Assistant Engineers by counting the period of service from February 21, 1970. We see considerable force in the contention of the learned counsel. We are of the view

that the initial appointment of the appellants being under the rules the final approval given by the Department Promotion Committee and the Madhya Pradesh Public Service Commission would relate back to February 21, 1970 when they were initially appointed.

Learned counsel for the private respondents have contended that the Tribunal has found that the initial appointment of the appellants w.e.f. February 21, 1970 was against the posts meant for the direct recruits.

We, are of the views that under the rules the fact that a particular vacancy relates to the direct recruit or the promotee is not relevant. The relevant rule itself assumes the appointment in Administrative Exigency. The appointments having been made in terms of the rules and continued thereafter the totality of the period has to be counted for fixation of seniority in the cadre of Assistant Engineers. The second contention of the leaned counsel for the respondent that there was considerable delay in challenging the seniority list is only mentioned to be rejected.

We, therefore, allow the appeal and direct that the seniority of the appellants be fixed in the cadre of Assistant Engineers by counting their total period of service from February 21, 1970. The consequent benefit of the said seniority shall be reflected in the seniority in the cadre of executive engineers for other consequential benefit, if any. The appeal is allowed. No costs.

13. Aforesaid position clarifies that the persons who were duly recruited after following the procedure for emergency appointment except, the interview by the Commission, were entitled to be regularized from the date of initial appointment and not by subsequent date.

14. The learned Single Judge has considered the matter extensively and by a reasoned order. As discussed hereinabove, the emergency appointees were duly regularized even by the State after getting concurrence from the State Public Service Commission, though aforesaid order has been given effect to with effect from 24.12.1998 but considering the facts and circumstances of the case, these were entitled for the benefit from the date of initial appointment as has been held by the writ Court. In the result, these appeals are found without merits and are dismissed. The appellants, however, shall give effect to the order passed by the writ court within a period of 60 days from today and shall also make payment of monetary benefit within the aforesaid period.