
(2015) 05 AHC CK 0140
In the Allahabad High Court
Case No : Special Appeal No. 31 of 2005

State of Uttar Pradesh

APPELLANT

Vs

Suryamani Singh and Others

RESPONDENT

Date of Decision : 08-05-2015

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226, 309

Citation : (2015) 5 ADJ 525 : (2015) 2 UPLBEC 1469

Hon'ble Judges : Amreshwar Pratap Sahi, J;Ahsanuddin Amanullah, J

Bench : Division Bench

Advocate : Anil K. Tiwari, Rakesh Kumar Nigam, Sameer Kalia, Sudeep Seth, U.N. Misra and Vinayak Saxena, for the Appellant; H.S. Shukla, H.S. Jain, Piyush Kumar Yogi, Rakesh Vishwakarma and Vivek Raj Singh, Advocates for the Respondent

Judgement

1. This appeal and the other connected matters are a fond subject of dispute of seniority in the field of service law where usually complicated facts and accommodative laws bring out bewildering situations, and to add further complexities are the judicial pronouncements which at times help to resolve a conflict of interest, but at times also raise challenges that remain uncharted on account of the peculiarities of a case. The present dispute is one such example, but with the able assistance of Sri Prashant Chandra learned senior counsel for the appellant State, Sri Asit Chaturvedi learned counsel for the private appellant, Sri Anil Tewari, learned senior counsel for the contesting respondent petitioners and Sri H.S. Jain Advocate, who pleaded vehemently with additional material for the respondents, Sri J.N. Mathur for the interveners with his written notes and last but not the least the hard labour of Sri Sudeep Seth Advocate for the State and Sri Apoorva Tewari for the private respondents, we have been able, to the best of our ability, rationalise the submissions and sifted the facts to reasonably attempt a resolution to this long drawn controversy.

2. The contribution of lawyers of eminence and products of real devoted labour

was truly exhibited during the hearing which spread over five days. It is this opportunity we would have missed had we not fixed the matter for a rehearing inspite of having reserved judgment earlier. The erudite arguments laced with the best legal acumen are the efforts of those, who can be described through the title of Lord Wavell's anthology of poem's "Other Men's Flowers". Montaigne was quoted by him "I have gathered a posie of other men's flowers and nothing but the thread that binds them is my own." (Quoted from Lord Denning's preface in Leaves from Library). This is what we have tried to do by arranging them what we found that would do justice to the parties.

3. A learned single judge accepted the contention of the writ petitioners and has granted relief.

4. Strangely enough, even though the entire seniority lists including the regularised LDA's seniority has been directed to be altered under the impugned judgment. None of those affected amongst the regularised LDA's have challenged the same through an appeal inspite of the fact that as a consequence thereof, a fresh exercise was undertaken and a new seniority list dated 21.10.2015 affecting the seniority earlier determined has been published. Thus they have knowledge of the altered seniority yet no challenge has been raised by the regularised LDA's.

5. The peculiar nature of the establishment to which the contesting employees belong to, is the Civil Secretariat at the state capital Lucknow, from where governance emanates. The entire state is administered, controlled and supervised under the notings and orders of this establishment of which the UDA's and LDA's form a sizeable chunk. The LDA's who have been recruited directly complain, that those who have entered the cadre through a different mode, who the respondent petitioners describe as "promotees", they are not entitled to seniority as per the impugned lists and orders, and eventually require refixation of their places by pushing them downwards. This has to be done by applying the rota quota rule treating the appointments to be by way of promotions.

6. Aggrieved by the judgment of the learned Single Judge in this matter relating to a dispute of seniority of Lower Division Assistants (LDAs) in the Civil Secretariat, Government of Uttar Pradesh, Lucknow the State has preferred this appeal.

7. The prayer made by the respondent-writ petitioners in their writ petition was to quash the seniority list dated 24th July, 1991 and 25th July, 1991 as well as the list dated 2nd November, 2000. Apart from this an additional prayer made was to quash the order dated 21st November, 2000 passed on the representation filed by the respondent-petitioners against the tentative seniority list. Thus in essence the challenge is to the seniority list that was promulgated as indicated above.

8. The writ petition had been filed by Surya Mani Singh and four others being

Writ Petition No. 6012 (S/S) of 2000. While allowing the petition the learned Single Judge quashed the seniority list dated 2nd November, 2000 and further directed the seniority list dated 24.7.1991 and 25.7.1991 to be modified by applying Rule 8(2) and Rule 8(3)(i) of the U.P. Public Servants Seniority Rules, 1991. A further direction was given to allot the prescribed quota for each selection year in the light of the observations therein and thereafter to promote the directly recruited candidates on the post of Upper Division Assistants from the dates their juniors had been promoted with consequential benefits.

9. The State of U.P. has come up in appeal and the facts on record indicate that the appeal was entertained but no interim order was granted. It is undisputed that as a consequence of no interim order operating in this appeal, a contempt application was filed by the writ petitioners and when notices were issued, the State under the threat of contempt, proceeded to prepare a seniority list which is dated 21st October, 2005 and which declares that the said seniority list shall be subject to the outcome of the present special appeal.

10. At the very outset there are more developments that need to be referred to as there are connected special appeals the date whereof is clearly linked with the outcome of the present appeal. Upon the declaration of the seniority list on 21.10.2005, writ petition No. 7284 (S/S) of 2005 was filed by Paras and others challenging the same. This was dismissed on the ground of alternative remedy vide judgment dated 18th January, 2006 by a learned Single Judge of this Court calling upon the petitioners therein to approach the U.P. Public Service Tribunal for challenging the same. Against this judgment dated 18th January, 2006, the writ petitioners therein have filed Special Appeal No. 46 of 2006.

11. Two other writ petitions have also been filed, one by Banarsi Ram and others and the other by Ram Shanker and others being Writ Petition No. 657 (S/S) of 2006 and 6924 (S/S) of 2006. In these writ petitions another seniority list apart from 21.10.2005 dated 23.2.2006 was also challenged. The maintainability of the said writ petition was objected to on the ground that the learned Single Judge has already dismissed one writ petition relegating the petitioners to the alternative remedy of filing a claim before the Public Services Tribunal. The learned Single Judge overruled the said objections vide order dated 19th August, 2006 and retained the petitions for proceeding in the matter.

12. Against the aforesaid order dated 19.8.2006, in the aforesaid two writ petitions, Special Appeal No. 589 of 2006 has been filed by Kishore Tandon and others where an interim observation has been made that the proceedings before the learned Single Judge shall remain deferred.

13. The impugned judgment dated 6th August, 2004 has also been challenged in Special Appeal No. 82 of 2006 by Sanjay Kumar Pandey and others who claim that they were recruited in 1992 under the U.P. Secretariat Ministerial Staff (First Amendment) Rules, 1990 (the first amendment to the 1942 Rules) after its promulgation on 5.11.1990 whereby 15% of Class IV/Group-D Employees were

given the benefit of recruitment upon selections through a procedure prescribed under the said amended rules.

14. The sequence of events therefore indicates that there are four special appeals, two against the judgment dated 6th August, 2004 and two which are consequential on account of the seniority list having been published on 21.10.2005 pursuant to the judgment of the learned Single Judge dated 6th August, 2004 impugned herein.

15. Learned counsel for the parties are not at variance on the issue that the judgment in the two special appeals against the learned Single Judge's judgment dated 6.8.2004 would ultimately govern the date of the other two special appeals.

16. In this background, Sri Prashant Chandra, learned Senior Counsel for the appellant State assisted by Sri Sudeep Seth Advocate, has proceeded with his arguments by contending that the source of recruitment, the method of recruitment and the cadre strength in relation to Lower Division Assistants in the Civil Secretariat were governed earlier by the Uttar Pradesh Secretariat Ministerial Staff Rules, 1942 and was in existence and is relevant for the purpose of the present controversy. He has therefore invited the attention of the Court to the various provisions of the said 1942 Rules to contend that in these rules there is no concept of promotion to the post of Lower Division Assistants. He submits that according to Rule 5, the mode of recruitment of LDA's is through a competitive examination to be conducted by the Uttar Pradesh Public Service Commission subject to the provisions of Rule 14 and Rule 24 which prescribe two other modes of recruitment departmentally. In the absence of any rule regarding promotion, he contends that these three separate modes of recruitment were only available to the State Government and none other. No appointments as LDA's were made by invoking Rule 14 and Rule 24 of this 1942 Rules of those whose seniority is in dispute. They were also not appointed by promotion.

17. He has then invited the attention of the Court to the fact that the 1942 Rules continued to exist and Rule 14(4) thereof was inserted on 5th November, 1990 through which 15% of the vacancies were to be offered to Group-D/Class IV Employees by way of recruitment through a qualifying examination to be conducted by the Commission as per the said provision. This rule was withdrawn w.e.f. 2nd March, 1995 the notification whereof was published on 2nd December, 1998. This was the fourth mode of recruitment that was available for a short time between the said period.

18. It appears that several employees who were holding different posts were given an officiating charge of Lower Division Assistants. These employees were extended the benefit of regular appointment under the U.P. Secretariat Upper Division Assistants and Lower Division Assistants (Regularization of Officiating Promotions) Rules, 1990. These rules were promulgated in exercise of powers under Article 309 of the Constitution of India but the said rules in turn refers to the service rules namely the Uttar Pradesh Secretariat Ministerial Staff Rules,

1942. It specifies that the persons who were initially appointed to the post of Typist/Telephone Operator/Tele Printer/Telex Operator/Junior Grade Clerk on a regular basis and were subsequently "promoted" in an officiating capacity as Lower Division Assistants before 1st April, 1989, and were continuing as such, would be considered for regular appointment in permanent or temporary vacancy to the post of lower division assistants. This was therefore the 5th mode of recruitment that was introduced under the 1990 Rules on the post of Lower Division Assistants. Sri Prashant Chandra contends that all these five modes nowhere introduce the concept of promotion, rather persons given officiating charge were given regular appointment under the 1990 Rules. The contention therefore is that this concept of promotion being absent in Rule 14 and 21 of the 1942 Service Rules, the learned Single Judge erroneously assumed that the dispute of seniority was between direct recruits and promotees whereas they were recruited through modes indicated above.

19. What needs to be clarified at this stage is that these persons who were inducted by way of regular appointment were 2034 in number and were beneficiaries of the notification dated 23rd July, 1990.

20. One of the primary submissions raised by Sri Prashant Chandra is to the effect that, the seniority list that was promulgated on 24.7.1991 and 25.7.1991 after the aforesaid regular appointments were made, they became subject-matter of consideration in Writ Petition No. 6200 (S/B) of 1993 and other connected matters before this Court. A division bench of this Court dismissed the writ petitions on 2nd July, 1996. A special leave petition filed against the said judgment was also dismissed by a speaking order. The contention of Sri Chandra is that once the said list dated 24th July, 1991 and 25th July, 1991 were subjected to judicial scrutiny and have been upheld much before the respondent-petitioners arrived in the cadre, the learned Single Judge could not have taken a converse view as it was not permissible for the learned Single Judge to issue a direction to modify the said list which had attained finality under the division bench judgment dated 2nd July, 1996 as affirmed by the Apex Court later on in 1997. The validity of the Regularization Rules 1990 have been upheld and the same cannot now be permitted to be challenged through an amendment by the respondents.

21. He further contends that in view of the dates of appointments of the respondent-petitioners as mentioned hereinafter they were not even born in the cadre nor could they be aggrieved by any such seniority list that was finalized and upheld in judicial proceedings before this Court and the Apex Court referred to hereinabove. The learned Single Judge therefore has committed an error by entertaining this argument in respect of the seniority lists of 24.7.1991 and 25.7.1991 and modifying the judgment of the division bench by issuing a direction to modify the said lists. The contention in short is that this was against all judicial propriety and the direction of the learned Single Judge therefore is unsustainable.

22. The respondent-petitioners are all direct recruits through the Uttar Pradesh Public Service Commission and their dates of appointments are 16.2.1999, 14.8.1997, 10.2.1999, 23.2.1999 and 24.2.1999 respectively. The respondent-petitioners are not claiming themselves to be promotees nor according to the learned counsel for the State-Appellant they had any claim as against any promotee, inasmuch as, no one had been promoted on any post nor any recruitment had been made by way of promotion.

23. Elaborating his submissions, Sri Prashant Chandra has invited the attention of the Court to Rule 14 to contend that this Rule envisages recruitment in special circumstances and is a separate mode of recruitment and not a recruitment by way of promotions. The contention of the State is that no such rule was ever invoked for making any appointments as LDA's in respect of the regularised LDA's.

24. In spite of the existence of these rules, fresh rules were introduced for accommodating 2034 persons under the 1990 Regularization Rules aforesaid. He contends that the use of the word "promotion" on officiating basis does not connote any exercise of recruitment by way of promotion. To the contrary, if any person was allowed to officiate on a higher post, the same was loosely captioned as officiating promotion. Only giving charge of a higher post was not a recruitment by way of promotion.

25. The 1990 Regularization rules itself specify that regular appointment was to be carried out as a matter of fact by way of selection under the said rules if the incumbent possessed all the prescribed qualifications thereof. It was thus not a rule of promotion but a rule of giving regular appointment provided the candidates fulfilled the conditions therein. He therefore submits that the learned Single Judge has probably erroneously treated the said recruitment as promotions in order to employ the quota-rota rule. The submission therefore is that the entire exercise by the learned Single Judge in upturning the seniority on the basis of such a premise is hit by the principles of erroneous assumption of facts and law both.

26. In the instant case the contention of Sri Chandra is that the quota and rota rule could not be applied as the vacancies available in one year have to be filled up on the basis of the results of the examinations and selection to be held in that particular year. Thus seniority as per Rule 46 of the 1942 Rules, has to be prepared accordingly. Then he submits that there is also a provision for a waiting list to be arranged in order of merit as disclosed in the results, and a combined waiting list shall then be prepared of the candidates qualifying departmentally for appointment under Rule 12, Rule 13, Rule 14 and Rule 24, taking one candidate from each of the two lists alternatively first name being that of a departmental candidate. The candidate selected by appointment under Rule 24(2) shall be placed at the bottom of the combined waiting list. This Rule 34 of waiting list under the 1942 Rules therefore also throws light about the placement of a candidate through this waiting list and whose seniority will have to be

determined accordingly as per Rule 46 on the basis of their respective positions in the waiting list.

27. Sri Chandra contends that the learned Single Judge has therefore gone beyond the rules that were applicable to the controversy and has incorrectly applied the quota and rota rule which was introduced for the first time under the U.P. Secretariat Ministerial Service Rules 1999. The concept of quota and rota therefore having been introduced for the first time under the 1999 Rules, there was no occasion to apply the same to the seniority that was determined in 1991 and in respect of candidates who had been recruited through different modes of recruitment indicated above under the 1942 Rules and the 1990 Regularization Rules. The applicability of the U.P. Government Servants Seniority Rules, 1991 will have to be read alongwith the 1942 Service Rules to determine seniority by locating the mode of recruitment and the date of substantive appointment.

28. His further contention is that the rule of seniority under the 1942 Rules clearly provides that a Member of Staff will ordinarily have his seniority fixed in the class in which he is appointed by the date of his substantive appointment and in the event more than one person being appointed on the same date, their seniority shall be according to their respective positions in the list/waiting list of selected candidates. He therefore submits that the fixation of seniority as per the U.P. Government Servants Seniority Rules, 1991 would have to be executed accordingly as the modes of fixing and determining seniority under the 1991 Rules has been dealt with in Rule 5, 6, 7, 8 and 9 according to the mode of recruitment.

29. In the instant case there is no separate mode of appointment by way of promotion to the post of LDA's nor any such appointment was made as a result of any promotion rule being available under the 1942 Rules. All the sources are alternate sources of recruitment either through competitive or qualifying examinations in different categories as indicated above and none of them are by way of promotion except for promotions under Rule 27 and 28. In such circumstances, pressing into service Rule 8 or Rule 9 of the Seniority Rules of 1991 and prescribing a quota and rota system was absolutely alien to the controversy of seniority of LDA's and the same has been incorrectly applied by the learned Single Judge. The regularization in 1990 is a regular appointment and not promotion.

30. He submits that the learned Single Judge has misconstrued the existence of a promotee cadre of LDA's, inasmuch as, no such cadre by way of promotion came into existence. The submission therefore is that all were modes of recruitment and so far as regularization is concerned, the regularization was also a different mode of recruitment through a qualifying examination in respect of such candidates who were occupying higher posts that has been described as an officiating promotion. As already indicated above, the stand of the State Government throughout has been that the regularization as LDA's under the 1990 Rules was another mode of recruitment and not a promotional benefit. The

benefit of recruitment was offered to those who were occupying the post of LDA or UDA and who were allowed to officiate on a promotional basis. This by itself was not a promotion as an LDA nor did it result in the creation of any promotee of LDA's cadre under the promotional quota.

31. Sri Chandra therefore contends that distributing placements as per the waiting list and the offer of appointment to departmental candidates under the relevant rules by reserving vacancies did not for the purpose of the present controversy in any way attract the quota-rota rule for fixation of seniority. The reservation of 80% of vacancies for departmental candidates for being considered for recruitment by no stretch of imagination can be a quota for promotion so as to deploy the quota-rota rule for fixation of seniority.

32. He further submits that the respondent-petitioners were admittedly not born in the cadre when recruitment was made under the Regularization Rules of 23rd July, 1990. In such circumstances, the respondent-petitioners have no locus to question their seniority. It is also urged that without a valid challenge to the regularization, the seniority of such regularised LDA's cannot be questioned. He further contends that a very strange method has been adopted by the respondent-petitioners in seeking to amend their relief in the writ petition by making a prayer for quashing the regularization order dated 23rd July, 1990. He submits that this amendment which was sought in the year 2008 after 18 years was neither entertainable nor any such plea can be maintained for quashing of the regularization order dated 23rd July, 1990. The pleading in a writ petition which has been decided in favour of the respondents cannot now be amended, and which judgment is being defended by them, clearly ended in favour of the respondents themselves and they have not chosen to assail the judgment of the learned Single Judge. In such circumstances, seeking to change their stand in the writ petition at this stage after a lapse of more than 18 years in the above-mentioned circumstances is impermissible in law.

33. He further submits that all those candidates whose seniority had been determined on 24th July, 1991 and 25th July, 1991 and again on 2.11.2000, they were not arrayed as parties and therefore the writ petition was bad for non-joinder of necessary parties. He has relied on the decision in the case of Vijay Kumar Kaul and Others Vs. Union of India (UOI) and Others, AIR 2012 SC 2274 : (2012) 134 FLR 8 : (2012) 5 SCALE 665 : (2012) 7 SCC 610 : (2012) 3 SLJ 242 : (2012) AIRSCW 3277 : (2012) 4 Supreme 97 to substantiate his submissions.

34. The contention is that if the modified seniority as per the order dated 21st October, 2005 is concerned, if maintained, the same results in a decision the consequences whereof are disastrous. He has demonstrated this with the aid of enclosures 5 and 6 to the written submissions filed on behalf of the State-Appellant.

35. Sri Anil Tiwari, learned Senior Counsel assisted by Sri Apoorv Tiwari has

advanced his submissions on behalf of the respondent-petitioners contending that the entire thrust of the argument of the State Government primarily is that the rules, namely the Uttar Pradesh, Secretariat Ministerial Staff Rules, 1942 do not make any provision for promotions and therefore the concept of promotion is alien to the said rules.

36. Sri Tiwari submits that the State has taken a stand as if the appointments made by the State, the seniority whereof was in dispute before the learned Single Judge was not by promotions and were alternate modes of recruitment, but he submits that the pleadings in the counter-affidavit of the State are otherwise. The argument which is being advanced by Sri Prashant Chandra for the State is therefore not in conformity with the pleadings. He however submits that in essence if the rules are read together then there are only two modes of recruitment, one that is direct recruitment and the other modes are recruitments which are not direct recruitment, and therefore are according to him nothing else but promotions. For this he has invited the attention of the Court to Rule 2(f) of the 1942 Rules, extracted hereinunder:

"2(f) "Direct recruitment" means recruitment made otherwise than by promotion"

37. The said rule defines direct recruitment to mean recruitment made otherwise than by promotions. Sri Tiwari submits that the word promotion therefore occurs in the 1942 Rules in contradistinction to direct recruitment and therefore the same is clearly referable to the other alternate modes of recruitment of departmental candidates who have been extended the benefit by the State Government. He therefore submits that the State Government cannot now say that they were not promotions. He has further pointed out the definition of the meaning of the word staff which means the entire cadre of non-gazetted ministerial staff of the Secretariat. The cadre of the staff has been defined in Rule 3.

38. Elaborating his submissions, Sri Tiwari submits that for this further reference will have to be made to Rule 14 of the 1942 Rules which is extracted herein under:

Rule 14. Reservation of vacancies in the posts of Lower Division Assistants in special circumstances-

(1) * * * *

(2) The appointing authority may, in special circumstances but not generally, and with the concurrence of the Commission, reserve in any year up to eighty per cent of the total number of permanent vacancies intended to be filled in that year, for departmental candidates who have rendered temporary or officiating service in the said or higher post for such total period as may be fixed in that behalf in consultation with the Commission and whose work is considered by the appointing authority to be satisfactory. The vacancies so reserved may be filled on the basis of a qualifying examination to be conducted by the Commission,

from amongst candidates who come up to such standard as is considered by the Commission to be reasonable. There shall be no upper age limit for such candidates either for their appearance at the said qualifying examination, or in the event of their success at that examination, for their appearance on equal terms with the candidates for direct recruitment at any subsequent competitive examination referred to in rule 5 in respect of the posts of Lower Division Assistants.

(3) Notwithstanding anything contained in rule 14(2) or in any other rule, the appointing authority may, having regard to the exigencies of Public Service, fill in existing permanent vacancies in the posts of Lower Division Assistants to the extent of 80 per cent from such departmental candidates who were recruited in previous years through the Commission against temporary vacancies or those recruited on the basis of a qualifying examination and who have completed at least one year's temporary or officiating service on the post of a Lower Division Assistant or on a higher post and whose record of service is considered to be satisfactory."

39. He contends that reservation of vacancies is contemplated under the said rule for departmental candidates for recruitment/appointment to the post of Lower Division Assistants. This is available to only such candidates who have rendered temporary or officiating service on the said post or higher post for a certain number of period that may be fixed by the appointing authority in consultation with the Commission.

40. Sri Tiwari therefore submits that this nature of reservation of 80% of the total number of permanent vacancies of Lower Division Assistants is clearly meant for in house candidates and for those who are already in service of the Secretariat. The provision therefore is to offer them a higher post keeping in view the fact that they shall be entitled and eligible for consideration provided they fulfill the conditions prescribed therein which also includes the consideration of the candidate after he appears in a qualifying examination to be conducted by the U.P. Public Service Commission. He has further pointed out that no upper age limit is provided for such candidates and therefore it is clear that the entire rule is for providing benefit of higher avenues in service which is nothing else but a mode of promotion and is not a mode of direct recruitment or any other alternate mode of recruitment. He submits that upon fulfilling the conditions, the person working in the lower grade gets a transition in service the consequence whereof is eventual promotion to a higher post. He contends that it is something different that the procedure prescribed for such promotion is through the commission but the same is not direct recruitment which envisages a different procedure under Rule 5 of the 1942 Rules. He submits that Rule 2(f) read with Rule 5(B)(4) clarifies the position that direct recruitment is by competitive examination to be conducted by the Commission whereas for the departmental candidates a qualifying examination is to be conducted by the Commission from amongst such candidates who have rendered temporary or officiating service for a particular

period as defined under Rule 14(2) referred to hereinabove. This therefore takes such recruitment through reservation of vacancies totally outside the purview of direct recruitment and by exercise of such discretion in special circumstances the State Government is empowered to make promotions.

41. The argument therefore appears to be that the seniority of such persons, which is being contested by the respondent-petitioners, and who were appointed by the State Government not by direct recruitment but by other methods have to be treated as promotions. He however submits that such recruitment is possible only after permanent vacancies are determined to be filled in that year as per the determination of number of vacancies under Rule 11 that has to be made annually to be filled up either through examinations or selection as the case may be, but without determining such vacancies the post cannot be reserved or offered to a departmental candidate.

42. He further submits that mere selection under the rules does not give any right of appointment unless the provisions of Rule 19 are also observed which provides that the appointing authority after such consideration under Rule 12, Rule 13 or Rule 14 as well as Rule 24 which are the other modes of recruitment have to be subjected to an inquiry and after a satisfactory opinion is formed in respect of such candidates then only he will be considered to be qualified or else he will be disqualified for appointment. He further contends that this two fold scrutiny of first examining the standard of the candidate amounts to judging his merit under Rule 14 through a qualifying examination and the second stage is of considering his suitability in terms of Rule 19(2). Such a rule is akin to the rule of merit-cum-seniority which is applied for promotions. He therefore submits that this procedure as well indicates that the other modes prescribed under Rule 12, 13, 14 and 24 are modes of promotion to a higher post keeping in view the peculiar nature of services of the Civil Secretariat. For this he submits that the Secretariat Establishment is a separate establishment of a peculiar nature and they are attached to an establishment from where they cannot be transferred or sent to any other place and rather they have to virtually stagnate in the same establishment. It is for this reason that the merit of suitable candidates are to be assessed for offering higher posts through reservation as defined aforesaid which clearly amounts to offering them advancements in their career and which procedure is nothing short of promotion. The LDA's, whose seniority is being assailed by the respondent-petitioners, have actually been given the benefit of promotion.

43. He has then invited the attention of the Court to Rule 24 which is again a reservation of vacancies in the post of Lower Division Assistants of a special category in relation to Telephone Operators, Junior Grade Clerks and approved candidates on the waiting list of these posts. Here Sri Tiwari advanced a separate argument that under Rule 24 it is obligatory on the State to carry out this exercise and to offer appointment by reserving one vacancy if the posts in every alternate year of recruitment as provided in the said rule. He therefore submits

that this is yet another mode but which was never adopted by the State Government inspite of a specific obligation cast on the State Government for doing so.

44. He has then invited the attention of the Court to Rule 34 which makes a provision for waiting lists. Here he submits that there shall be two types of waiting lists, one being the list of departmental candidates qualifying separately under Rule 12, Rule 13, Rule 14 and Rule 24 and then a combined list of all such candidates to be a waiting list which according to him would be available to offer appointments on the higher post of LDA as and when the vacancies come into existence.

45. Appointment is provided for under Rule 35 which has to be in order in which the names of candidates stand in the list of selection or the waiting list as the case may be.

46. When it comes to seniority under the 1942 Rules the provision is clear that it shall be determined in the class to which one is appointed by the date of his substantive appointment and in the case of more than one person appointed on the same date according to their respective positions in the waiting list. Rule 46 is quoted hereinunder:

"Rule 46. Seniority--The seniority of a member of the staff shall ordinarily be determined in the class to which he is appointed by the date of his substantive appointment and in the case of more than one person appointed in the same date according to their respective positions in the waiting list.

Provided that the seniority of such members of the staff as were holding substantive appointments in the Government Estate Department immediately before April 1, 1965 shall in consequence of the merger of that Department will the Uttar Pradesh Secretariat be determined in such a manner that for every two years of service rendered by them in a substantive capacity in that Department before the said date, they shall be allowed the benefit of one year's substantive service, and their seniority vis-a-vis the other members of the staff shall be fixed accordingly."

47. The contention therefore is that the candidates who are appointed otherwise than through direct recruitment and are internal departmental candidates, have to be considered as promotees and their appointment if made in terms of 1942 Rules, would be treated as a substantive appointment if the same has been done in conformity with the said rules. On the other hand, if any promotion has been made without following the said rules, then a person would not be treated to be substantively appointed so as to form part of the cadre and claim consequential seniority.

48. To substantiate his submissions that the rules indicate promotional avenues and any attempt made to give a higher post amounts to promotion, Sri Tiwari has cited the following judgments:

1. Dr. Harkishan Singh Vs. State of Punjab and Others, AIR 1971 SC 1602 : (1971) 2 SCC 58 : (1971) SCR 223 Supp : (1971) 3 UJ 576 ;
2. Dr. Harkishan Singh Vs. State of Punjab and Others, AIR 1971 SC 1602 : (1971) 2 SCC 58 : (1971) SCR 223 Supp : (1971) 3 UJ 576 ;
3. Director, General Rice Research Institution, Cuttack and Another Vs. Khetra Mohan Das, AIR 1995 SC 122 : (1994) 6 JT 482 : (1995) 1 LLJ 989 : (1994) 4 SCALE 404 : (1994) 3 SCC 595 Supp : (1994) 4 SCR 301 Supp : (1995) 1 SLJ 127 ;
4. Tarsem Singh and Another Vs. State of Punjab and Others, AIR 1995 SC 384 : (1994) 4 JT 303 : (1995) 2 LLJ 104 : (1994) 3 SCALE 145 : (1994) 5 SCC 392 : (1994) 1 SCR 452 Supp : (1995) 1 SLJ 187 : (1994) 2 UJ 575 ;
5. K. Narayanan and others Vs. State of Karnataka and others, AIR 1994 SC 55 : (1993) 5 JT 102 : (1993) LabIC 2259 : (1993) 3 SCALE 614 : (1994) 1 SCC 44 Supp : (1993) 2 SCR 105 Supp ;
6. Union of India (UOI) and Another Vs. S.S. Ranade, (1995) 71 FLR 492 : (1995) 2 JT 582 : (1995) 3 SCALE 65 : (1995) 4 SCC 462 : (1995) 3 SCR 773 ;
7. State of Rajasthan Vs. Fateh Chand Soni, (1996) 1 AD 261 : (1995) 9 JT 523 : (1995) 7 SCALE 168 : (1996) 1 SCC 562 : (1995) 6 SCR 559 Supp ;
8. Shri Ram Prasad Etc. Etc. Vs. Shri D.K. Vijay and Others Etc. Etc., AIR 1999 SC 3563 : (1999) 6 JT 631 : (1999) 5 SCALE 583 : (1999) 7 SCC 251 : (1999) SCC(L&S) 1275 : (1999) 2 SCR 576 Supp : (1999) AIRSCW 3569 : (1999) 8 Supreme 157 .

49. The aforesaid judgments have been cited in support of the proposition that whenever a higher post or a higher pay scale is offered to an in house candidate, the same amounts to promotion.

50. These judgments therefore reflect on the concept of promotion as an advancement in career to a higher post or a higher pay scale. With the aid of these judgments, Sri Tiwari submits that the rules of 1942 which provide for other modes of recruitment as discussed hereinabove, other than direct recruitment, are clearly designed to promote the internal departmental candidates.

51. Sri Tiwari thereafter has advanced his submissions in relation to those 2034 candidates who have been absorbed under the Uttar Pradesh Secretariat, Upper Division Assistants and Lower Division Assistants (Regularization of Officiating Promotions) Rules, 1990 contending that the regularization is by way of promotion. This rule and offer of regularization to such employees whose seniority is the bone of contention between the respondent-petitioners and the State has been framed in exercise of powers conferred under Article 309 of the Constitution of India. The rules were notified on 23rd July, 1990. According to Rule 2 thereof, they shall have effect notwithstanding to the contrary contained

in any other rules or orders but at the same time Rule 3(6) defines that service rule means the Uttar Pradesh Secretariat Ministerial Staff Rules, 1942. Thus, even though an overriding effect has been given to such rules, but they refer to the 1942 Rules.

52. Sri Tiwari contends that regularization was offered to such persons who were officiating in higher posts and were described as having been promoted in officiating capacity. They were however to be considered for regular appointment and according to Rule 4(3) a Selection Committee consisting of three officers was to be constituted for selecting such candidates and then preparation of an eligibility list for considering appointment after assessing their suitability. The select list was to be prepared by the Selection Committee.

53. The rules further provide that such appointments shall be considered for regular appointment against permanent or available temporary vacancies under Rule 4. The word available vacancy has been defined in Rule 3(2) to mean such a vacancy for which no candidate had been recommended by the Commission before the date of notification of these rules. This clearly means that any vacancy, permanent or temporary existing as per cadre strength under 1942 Rules, would be offered for regular appointment provided such vacancies have not been notified or recommended by the Commission before the date of notification of the said rules. What therefore follows is if the Commission has not recommended any candidate for any such vacancy then only regularization would be offered against such a post. Sri Tiwari submits that the vacancy has to be available before hand. The vacancy according to him has to be determined as per Rule 11 of the 1942 Rules or otherwise should also exist prior to the notifications of the rules of regularization on 23rd July, 1990. It is only thereafter that the Selection Committee would proceed to consider any candidate and it is only after such selection that the appointment can be deemed to be an appointment under the service rule as per Rule 6. He further points out that Rule 7 of the 1990 rules also demonstrates that seniority would be available in accordance with service rules and inter se seniority of the candidates would be the same as it was in the cadre from which they were promoted on an officiating basis.

54. The contention of Sri Tiwari is that even this procedure under the 23rd July, 1990 notification was not followed nor was it observed and all regularization which followed as a consequence of the said notification is invalid. He submits that since the said rules also provide for a clear rule of seniority to be adopted for such candidates, the same can always be questioned and can be adjudicated by this Court even at the instance of the respondent-petitioners who were born later in the cadre. This can be done, inasmuch as, if any illegal appointment de-hors the rules and contrary to the cadre strength has been made, the same would not confer any entitlement at least to claim seniority over and above the direct recruits.

55. He also contends that such appointees will be deemed to be in service only if appointments can be saved lawfully and if the appointments cannot stand the

scrutiny of the rules under which such appointments have been made such candidates have to be pushed down for the purpose of seniority as against direct recruits.

56. The contention of Sri Tiwari is that even for the purpose of being born in the promotion cadre the appointment has to be as per the cadre strength and the vacancies available as indicated above and the appointments should be in accordance with the rules. If both these contingencies are absent, then if the appointment is beyond the cadre strength the person would not be entitled to any such benefit unless he enters the cadre as and when the vacancies are available. The State Government did not undertake any such exercise and rather thrust upon the cadre these 2034 candidates without there being any posts available. In such circumstances, he contends that the issue of delay in challenging the seniority awarded to such candidates would not impede the challenge raised on behalf of the respondent-petitioners.

57. To demonstrate that the vacancies were not available, he has invited the attention of the Court to Paras 7 and 8 and other paragraphs of the counter-affidavit filed on behalf of the State on 11th January, 2000 the affidavit whereof is sworn by Sri Dhirendra Pratap Singh. He submits that there the cadre strength has been described and the figures given therein are totally incorrect and false. He submits that no determination of vacancy was undertaken under the 1942 Rules that could have been offered to such reserved category of internal candidates and realizing that no such exercise has been undertaken, the State Government hurriedly in a very novel manner introduced and notified the Rules dated 23rd July, 1990 which is neither in conformity with the 1942 Rules nor is it in conformity with law. Otherwise also assuming that the said rules notified on 23rd July, 1990 do confer some rights the same has been followed in its utmost breach. The contention is that at one place the cadre strength is described as 886 and another place the same swells to 1100 or odd. He therefore submits that even if these figures are admitted it is not understood as to how 2034 candidates have been extended the benefit of regularization. He further submits that the description of creation of 773 supernumerary posts in the counter-affidavit does not spell out as to when these posts were so created. It is at this juncture that it is relevant to mention that the appellant State has placed before us the notification dated 6th August, 1990 indicating the existing and the posts that have been created and described as supernumerary posts in the counter-affidavit. The said notification dated 6th August, 1990 is extracted hereinunder:

58. The argument therefore is that having failed to determine the correct number of vacancies and there being no posts available on 23rd July, 1990, the entire process of regular appointment on the same date that is 23rd July, 1990 is totally illegal and therefore it cannot confer any status on such appointees to claim seniority as they are not part of the cadre. Even otherwise, the word supernumerary used in the counter-affidavit itself is indicative of the fact that they are posts beyond the cadre and therefore seniority would be available only

for such candidates who are within the cadre and not against supernumerary posts. It has however been clarified by Sri Sudeep Seth at this stage that the word supernumerary appears to have been loosely used in the counter-affidavit whereas the notification dated 6th August, 1990 creating the posts clearly describes them to be temporary posts and therefore they be treated accordingly and not as supernumerary posts.

59. Sri Tiwari taking a dig at this stand of the State submits that this fact of the creation of the posts subsequent to the notification dated 23rd July, 1990 was neither placed before the learned Single Judge nor has the learned Single Judge taken notice of this fact but he has rightly arrived at the conclusion that the seniority deserves to be redetermined treating them to be promo tees.

60. Sri Tiwari contends that if the posts itself were created much after 23rd July, 1990, then no benefits accrue to any of the appointees as the word "available vacancy" is that for which no candidate had been recommended by the Commission before the date of notification of the rules. In the instant case, the notification dated 6th August, 1990 establishes that there were no posts available except the permanent nature of posts indicated therein which was also not determined as per Rule 11. In this unsure state it is obvious that at least the 773 additional posts that came into existence for the first time on 6.8.1990 were not there for being offered for appointment when the regularization rules were promulgated on 23.7.1990. Not only this, the said post creation order also clearly prescribes that these appointees would be in addition to the cadre strength and the posts would stand abolished as and when the appointees enter a particular cadre.

61. Sri Tiwari therefore contends that it is only as and when such candidates enter the cadre that they would be entitled to count their seniority from such date and not from the date of their alleged regular appointment on 23rd July, 1990. In this background, even though the respondent-petitioners have been appointed through direct recruitment later on between 1997 and 1999, yet they can challenge their placement in seniority as against such candidates who are not even part of the cadre and admittedly their status is beyond the cadre strength as indicated hereinabove.

62. Sri Tiwari submits that under the 1990 Rules dated 23.7.1990 these persons may have been appointed and their appointment may not be open to challenge but they have been kept alive without being born into the cadre, particularly the 773 candidates who have been referred to hereinabove. He therefore submits that the question of seniority hinges upon the very factum of mode of a person entering into the cadre through a regular appointment in accordance the rules against available vacancies. Any illegal action of the State Government cannot enure any benefit on such appointees as that would be putting a premium on the Government's illegal action. Such appointees according to Sri Tiwari will continue to hold lien on their original posts till they are absorbed regularly into the cadre. The notification dated 23rd July, 1990 does not therefore confer any such right

and this issue has to be gone into as a matter of principle by this Court as well as by the State Government before finalizing seniority. Sri Tiwary has then cited the following judgments to support his submissions:

1. M.S.L. Patil, Asstt. Conservator of Forests, Solarpur (Maharashtra) and Others Vs. State of Maharashtra and Others, (1996) 8 AD 681 : (1996) 10 JT 334 : (1997) 2 LLJ 183 : (1996) 8 SCALE 291 : (1996) 11 SCC 361 : (1996) 7 SCR 644 Supp ;

2. C.K. Antony Vs. B. Muraleedharan and Others, (1998) 6 AD 635 : AIR 1998 SC 3136 : (1998) 5 JT 11 : (1998) LabIC 3519 : (1999) 1 LLJ 572 : (1998) 5 SCALE 32 : (1998) 6 SCC 630 : (1998) SCC(L&S) 1624 : (1998) 1 SCR 280 Supp : (1999) 2 SLJ 106 : (1998) AIRSCW 3051 : (1998) 7 Supreme 75 ;

3. Sanjay K. Sinha-II and Others Vs. State of Bihar and Others, AIR 2004 SC 3460 : (2004) 102 FLR 215 : (2004) 6 SCALE 66 : (2004) 10 SCC 734 : (2005) SCC(L&S) 169 : (2004) 2 SCR 834 Supp : (2004) 3 SLJ 375 : (2004) AIRSCW 3214 : (2004) 5 Supreme 312 ;

4. State of Rajasthan and Others Vs. Jagdish Narain Chaturvedi, AIR 2010 SC 157 : (2009) 13 JT 9 : (2009) 8 SCALE 28 : (2009) 12 SCC 49 : (2010) 1 SCC(L&S) 105 : (2009) 9 SCR 1011 : (2009) 8 SLR 505 .

63. One more contention has been raised by Sri Anil Tiwari, namely that the manner in which the selections are alleged to have been carried out on the same day, it was not possible for a selection committee to have interviewed or assessed their suitability in just one day. The State issued letters of appointment on the same date when the 1990 Regulations were promulgated.

64. The contention further is that the appellant State having not taken any exercise of determining the figures of available vacancy has simply indicated figures of filling up vacancies of direct recruitment and departmental candidates in Paragraph 8 of their counter-affidavit the total whereof comes to 1039 posts.

65. The State has also taken a stand that 1259 sanctioned posts were available and according to Sri Tiwari if 1039 persons were working against the said posts then only 220 posts were available that could be stated to be within the strength of available vacancies. At this juncture the contention of the respondent is that the appellant State did not file any document in support of the averment contained in the counter-affidavit and they have deliberately tried to suppress certain facts relating to the status of the creation of the posts and of the availability of substantive vacancies from time to time.

66. It has been further contended that since the proceedings under Article 226 of the Constitution of India are original proceedings then as per the High Court Rules of 1952 all pleadings should be clear and should be supported by any such documents that may substantiate the stand taken by a particular litigant. The reason for this is that the proceedings being solemn, the evidence and the facts in its entirety have to be disclosed for the purpose of adjudicating a controversy

as no other mechanism is available. If the State Government has chosen to suppress certain facts and has not disclosed the orders of creation of the post then such a stand is hit by the principles laid down in the case of *Bharat Singh and Others Vs. State of Haryana and Others*, AIR 1988 SC 2181 : (1988) 4 JT 91 : (1988) 2 SCALE 890 : (1988) 4 SCC 534 : (1988) 2 SCR 1050 Supp .

67. Replying to the arguments relating to finality of the judgment dated 2nd July, 1996 by a division bench of this Court, Sri Prashant Chandra for the appellant contends that it is incorrect to allege that the judgment does not deal with the present issue as well. To the contrary, it is urged that the said judgment attaches finality not only to the determination of seniority of UDA's and LDA's but also to the validity of the 23rd July, 1990 regularization order. The submission therefore is that the said judgment that has attained finality after contest with the State, the same cannot be permitted to be reopened in a collateral challenge. It has been urged that the said judgment has already been upheld by the Apex Court on 27.1.1997 by a speaking order and therefore the judgment of the learned Single Judge has merged in the order of the Apex Court reported in *U.P. Secretariat U.D.A. Association and others v. State of U.P. and others*; 1999 (1) SCC 278 and therefore it's correctness either on fact or law cannot be gone into by a coordinate bench as it would amount to reopening the same issue that has been finalized upto the Apex Court.

68. Sri Tiwari for the respondent-petitioners disputes this proposition and contends that the entire judgment was in relation to Upper Division Assistants and there was no issue before the said division bench about the LDAs. Thus the said judgment is not binding and it has not even touched the issue of determination of vacancy under Rule 11 or the other issues that have been argued in relation to LDAs in the present writ petition. The judgment of the division bench therefore is confined only to the dispute of UDAs and it is not correct to say that the division bench has approved the seniority list of the Lower Division Assistants. He further contends that there is a reference to Rule 46 and while dismissing the special leave petition the Supreme Court has made certain observations with a direction that the fitment of the candidates shall be carried out in accordance with law. This exercise of fitment was therefore a direction over and above the judgment of the division bench but the same has not been followed till date as such no finality can be attributed to the dispute of seniority.

69. Sri Tiwari then contends that the regularization of 2034 persons en-bloc over the direct recruits of 1985, 1991 and 1995 batch is an arbitrary act which violates Article 14 and 16 of the Constitution of India. He further submits that Rule of seniority that is U.P. Government Servants Seniority Rules, 1991 has to be applied in terms of the ratio of the decision in the case of *Pawan Pratap Singh and Others Vs. Reevan Singh and Others*, (2011) 2 JT 248 : (2011) 2 SCALE 327 : (2011) 3 SCC 267 : (2011) 1 SCC(L&S) 481 : (2011) 2 SCR 831 : (2011) AIRSCW 1365 : (2011) AIRSCW 3916 : (2011) 5 Supreme 579 . He submits that once it is held that those persons who have been regularized on 23.7.1990 are

promotees then the quota and rota rule has to be deployed as defined under Rule 8 of the 1991 Rules. Admittedly since the said rule was not followed the writ petition was filed challenging the wrong criteria adopted by the Government. His submission is that no individual dispute was raised but extending of the benefit of seniority en bloc to all the 2034 persons directly affecting the rights of the respondent-petitioners came to be rightly challenged in the absence of following the correct rule. The petitioners were justified in assailing the same. He has further invited the attention of the Court to the judgment in the case *The General Manager, South Central Railway, Secunderabad and Another Vs. A.V.R. Siddhantti and Others*, AIR 1974 SC 1755 : (1974) 28 FLR 231 : (1974) 1 LLJ 312 : (1974) 4 SCC 335 : (1974) 3 SCR 207 : (1974) 1 SLJ 576 , to support his contention.

70. Sri Tiwari further contends that the issue of delay in filing the writ petition or of laches was never pleaded either in the counter-affidavit nor is it a ground in the present special appeal and as such the contention that the writ petition was wrongly entertained deserves rejection. The cause of action to the respondent-petitioners accrued immediately in the year 2000 when the list of 24th July, 1991 and 25th July, 1991 was modified and then issued on 2.11.2000 whereafter the present writ petition was filed giving rise to the present controversy. Thus there is neither any delay nor any laches so as to non-suit the respondent-petitioners.

71. The next question raised by the appellant is with regard to non-joinder of necessary party, namely those candidates who had been extended the benefit of seniority. The said argument is countered by the submission that the writ petition prays for quashing of the order dated 2.11.2000 and also 24.7.1991 and 25.7.1991 as the said lists were also modified by the said order of 2nd November, 2000 on a policy that was without applying the correct rules. Thus the respondent-petitioners had ample cause to challenge the same hence the contention that there was a lapse on the part of the respondent-petitioners and that they had no cause of action is without any basis. There is therefore neither any delay nor is there any impediment in challenging the seniority list that adversely affects seniority of the respondent-petitioners vis-a-vis the promotees. He has further cited the judgment in the case of *Pawan Pratap Singh v. State of U.P.* (supra) to substantiate his submissions.

72. Sri Jain has joined the arguments of Sri Tiwari and in addition to the arguments advanced by him has urged that Para 8 of the writ petition categorically raises the plea of the 1990 Rules being unconstitutional. Merely because a prayer to quash the same has not been made, the relief can always be moulded by this Court to correct the error.

73. He submits that if injustice has been caused to the direct recruits it can be pointed out even at a later stage when their rights are affected. The petitioners have also come up challenging the order dated 2.11.2000 and the petition was presented promptly. He contends that the seniority lists were issued in relation to typists and the vacancies in the grade of Lower Division Assistants. The said lists dated 24.7.1991 and 25.7.1991 are not a determination of seniority inter se

between the promotees and direct recruits. On merits he contends that the lists were just issued without preceded by any exercise to determine the vacancies and their availability and status of substantive appointments against substantive vacancies within the cadre strength. He submits that the order dated 2.11.2000 partly favours the respondent-petitioners yet has been passed in an inconsistent way as such it has been rightly quashed by the learned Single Judge.

74. Sri Vivek Raj Singh has also adopted the same argument and so has Sri J.N. Mathur, learned Senior Counsel appearing on behalf of the intervenors. It may be stated at this very juncture that some employees have filed an application as intervenors. Sri J.N. Mathur, learned Senior Counsel contending that as a consequence of the judgment of the learned Single Judge several LDAs have been given higher posts of UDAs. Accordingly, the intervenors have also a right to receive the same benefits which has been denied to them but this is on account of a wrong fixation of seniority that the aforesaid rights have not yet crystallized. They therefore seek a direction to the competent authority to determine their seniority and to award them consequential benefits of promotion as UDA"s.

75. Sri Prashant Chandra in rejoinder has invited the attention of the Court to the rules of 1942 once again and Rule 5 in particular. He submits that a perusal of the said rule would clearly indicate that the posts of Lower Division Assistants was never intended to be a promotional post. To the contrary, in Rule 5 itself those posts which have been filled up by promotion have been specifically provided for whereas the post of UDA have to be filled up through a competitive examination subject to Rule 14 and Rule 24. The contention therefore is that if the rule making authority intended Rule 14 and Rule 24 to be modes of promotion, they would have mentioned so, but having consciously extended the benefits of promotion in other categories and having consciously omitted the same for LDA posts, the only presumption in law would be that the rule making authority was fully aware of the concept of promotion which has been provided for in Rule 5 read with Rule 21 and 27 and 28 of the 1942 Rules and not for appointments under Rule 14 and Rule 24. The contention is that wherever the rule making authority has provided for promotion, the same has been referred to in the 1942 Rules specifically and thus the concept of promotion is not foreign or alien to the said rules. To the contrary there is a conscious departure by the rule making authority by providing selections through qualifying examinations in respect of the LDAs under Rule 5(b)(4) and not by promotion. Thus, if there is a clear departure and the word "provision" has been used instead of "promotion" in respect of the Lower Division Assistants, then in that event by no argument or interpretation can promotion be attributed as a characteristic of Rule 14 and 24. He therefore submits that it would be wrong to presume that Rule 14 and 24 are channels of promotion and no such benefit has been given to the regularized LDA"s by invoking any such rule.

76. The contention clearly is that appointment through a selection recruitment

process, and not as promotion, has been given under the Regularization Rules dated 23.7.1990.

77. He has further invited the attention of the Court to the division bench judgment dated 2nd July, 1996 to contend that the said judgment deals with the validity of the 23rd July, 1990 Rules which have been upheld from all angles and therefore this coordinate bench cannot enter into the correctness or otherwise of the same, inasmuch as, the said judgment has also attained finality being upheld by the Apex Court. He has further cited the decision in the case of Union of India (UOI) and Others Vs. Major S.P. Sharma and Others, (2014) 3 JT 611 : (2014) 3 SCALE 484 : (2014) 6 SCC 351 , to emphasize on doctrine of certainty and finality as well as state decisis. Another judgment in Shiba Shankar Mohapatra and Others Vs. State of Orissa and Others, AIR 2010 SC 706 : (2010) 124 FLR 3 : (2009) 14 JT 298 : (2009) 13 SCALE 689 : (2010) 12 SCC 471 : (2011) 1 SCC(L&S) 229 : (2009) 16 SCR 866 : (2009) 6 SLR 483 : (2010) AIRSCW 348 : (2009) 7 Supreme 424 , has also been cited and it has been urged that once the issue of those appointed and regularised on 23rd July, 1990 is final and the same has been acknowledged and approved by the division bench in the judgment dated 2nd July, 1996 then inspite of the said judgment being a judgment in respect of UDAs the same principles would apply for the LDAs. This coordinate bench therefore cannot override the ratio of the said judgment which has already merged in the judgment of the Supreme Court.

78. A brief survey of the rules relating to the source of recruitment, the mode of recruitment, the placement of the candidates as per selections and their consequential seniority, deserves mention.

79. The first is obviously the rules that govern the source and mode of recruitment of the employees in the Civil Secretariat. This commences with the Uttar Pradesh Secretariat Ministerial Staff Rules, 1942. Rule 2(f) defines, direct recruitment to be recruitment made otherwise than by promotion. Rule 3, describes the strength of the cadre in the respective categories. We are concerned with the strength of the cadre of the subordinate category placed under (B)(4) Lower Division Assistants. Rule 5 describes the sources of recruitment and for the subordinate category (B)(4), the source of recruitment of Lower Division Assistants is by a competitive examination to be conducted by the U.P. Public Service Commission subject to the provisions of Rules 14 and 24.

80. The qualification of a Lower Division Assistant is prescribed as a Bachelor's Degree from a recognized university under Rule 9. Then comes Part-5, the procedure of recruitment. Rule 11 describes the ascertainment of the number of vacancies available at the commencement of year for being filled up on the basis of selections/examinations to be held in that year. Thus year-wise vacancies are to be filled up through selection or examination as the case may be including the post of Lower Division Assistants.

81. Rule 14 is one of those rules which is under consideration in the present

dispute as it relates to departmental candidates. This provides that in any particular year, the number of vacancies available could be in special circumstances, but not generally, be reserved to a maximum of 80% of the total number of permanent vacancies for departmental candidates to be filled on the basis of a qualifying examination to be conducted by the commission. Thus a departmental candidate has the opportunity of getting recruited against 80% of the vacancies in a particular year to the post of Lower Division Assistant by undergoing a qualifying examination to be conducted by the Uttar Pradesh Public Service Commission. The selection has to be made on the basis of the results of such examination where their names would be arranged in order of merit on a consideration of the marks obtained by them.

82. Similarly in the case of Telephone Operators and Junior Grade Clerks who have been extended benefit under Rule 24 to appear in such qualifying examinations would also be placed accordingly. Rule 24 provides that one vacancy in the post of Lower Division Assistant shall be reserved in every alternate year of recruitment for such Telephone Operators and Junior Grade Clerks subject to the conditions mentioned therein. Then comes the waiting list prepared under Rule 34 that is to be arranged by placing the candidates in order of their names disclosed in the results of the examination for that particular year.

83. Thus the aforesaid modes of recruitment nowhere indicate recruitment by way of promotion rather modes are by way of reserving vacancies for particular class of posts and allowing them to enter into the cadre of Lower Division Assistant after passing a qualifying examination. The candidates regularized under the 1990 Rules were given regular appointment and do not appear to have been promoted under any provision of the 1942 Rules.

84. Then comes Rule 46 that allows fixation of seniority from the date of substantive appointment of a person. The list of seniority therefore of all such employees recruited under the 1942 Rules aforesaid were being prepared accordingly.

85. Another set of employees were benefited by offering them a different mode of recruitment by amending Rule 14 and inserting sub-rule (4) therein which provides for 15% of posts to be offered to departmental candidates of Class IV/ Group-D. This also appears to be an avenue provided to occupy a higher post which again is not exactly by way of promotion but by way of recruitment through appearing in a qualifying examination as described in the First Amendment Rules of 1990 to the 42 Rules brought into effect on 5.11.1990.

86. Then come employees who were given officiating charge of Lower Division Assistants and who, as per the notification dated 23rd July, 1990, were extended the benefit of the U.P. Secretariat Upper Division Assistants (Regularization of Officiating Promotion) Rules, 1990. Even though the words used are regularization of officiating promotion, yet the stand of the State is that they were holding charge of a higher post and were not appointed by any mode of

promotion. To the contrary, the said rules itself provide a mode of recruitment by making such appointments regular after conducting a qualifying examination by the Public Service Commission. This induction through this mode of recruitment coupled with the 15% posts offered to Class IV employees referred to hereinabove and the other existing Lower Division Assistants were to be given seniority in the background aforesaid. The U.P. Government Servants Seniority Rules, 1991 were promulgated and then the two seniority lists of 24th July, 1991 and 25th July, 1991 were prepared by giving placement as per the status of the employees recruited through different modes and also their seniority which was to be done as per Rule 46 of the 1942 Rules at the time of their inception into the cadre. This was to be done against available vacancies as defined in the 1990 Regularization Rules.

87. What has to be kept in mind is the source and mode of recruitment for the purpose of placing every person so recruited in order to determine his seniority which under the 1942 Rules as well as under the year 1991 Rules is clearly related to the date of substantive appointment as indicated above. The sources of recruitment employed in the present dispute are stated to be alternate modes of recruitment. The vacancies which are to be filled by alternate mode of recruitment are through qualifying examinations and they nowhere indicate promotion as the source of recruitment.

88. The rule of determination of seniority remains the same for all namely the date of substantive appointment.

89. This being the position of the rules, it appears that the State Government proceeded by determining such seniority and publishing the lists on 24.7.1991 and 25.7.1991. The Class IV/Group-D employees who were recruited under the First Amendment Rules of 1990 against 15% reservation of vacancies their seniority had also to be determined and all these culminated in the publishing of another seniority list of 2nd November, 2000 after a tentative seniority list had been published on 5.5.2000. This brought in the placement of such candidates who had been recruited aforesaid. The inclusion of such names was represented against by the contesting respondents who obviously are direct recruits between the year 1997 and 1999. Their representation was rejected on 21.11.2000 but before that the writ petition was filed by them challenging the seniority list of 1991. The seniority list of the year 2000 as well as the rejection of their representation was later on challenged by an amendment.

90. The first question is as to whether the seniority list dated 24.7.1991 and 25.7.1991 could be assailed by the respondent-petitioners who were not even born in the cadre. In this regard the argument of the State has to be considered in the light of the decision rendered in Writ Petition No. 6200 (S/B) of 1993 which was in relation to the same seniority list dated 24th July, 1991 and 25th July, 1991. The judgment dated 2nd July, 1996 in Writ Petition No. 6200 of 1993 and another connected writ petitions, U.P. Secretariat, UDA Association through its Secretary v. State of U.P. and others, has been filed as Annexure 1 to the Stay

Application in the present appeal. The direct recruits filed a special leave petition against the said judgment which was dismissed on 20th November, 1996 by the Apex Court. Similarly, those candidates who had been promoted to the Upper Division Assistants posts felt aggrieved by the fixation of such seniority and the judgment of the division bench and they also filed special leave petition No. 25086 of 1996 which was dismissed on 27.1.1997. The question is what would be the impact of the division bench judgment dated 2nd July, 1996 on the seniority of those persons that had already been determined.

91. The second question is, can such seniority be questioned by the recruits of the year 1997 or 1999 who are the respondent-petitioners herein long after they were born in the cadre, that is to say, whether the challenge is prevented by delay and laches.

92. The division bench judgment dated 2.7.1996 describes those UDA's who were regularized on 23rd July, 1990 as promotees. The division bench posed a question as to whether they could be given seniority of the previous years of their officiation of promotion and which quota was available to them. It is to be noted that, that the division bench judgment was concerned with the benefit of promotion as Upper Division Assistants and their seniority. While proceeding to decide the same, it was also observed that the counter-affidavit of the State mentions the office memorandum dated 24th July, 1991 and 25th July, 1991 of the seniority list of Lower Division Assistants. In the aforesaid circumstances what can be gathered is that the seniority of the Lower Division Assistants was noted but the same does not appear to be the bone of contention between the parties or an issue of adjudication. The decision is confined to the status of UDA's.

93. The contention appears to have been based on the applicability of the quota and rota rule for the promotees on the post of Upper Division Assistants and it is in this context that the list of 24th July, 1991 and 25th July, 1991 was referred to in the said judgment. The contention therefore that the said list after contest had been upheld for LDA's as well does not appear to be correct.

94. Secondly, the said list of 1991 could obviously not have been challenged by the respondent-petitioners prior to their coming into the cadre. It appears that the seniority list which was published on 2.11.2000 and which also included the seniority fixed in 1991 came to be challenged by the respondent-petitioners on several grounds whereafter the learned Single Judge has proceeded to deliver the impugned judgment. However, while dealing with the said issue, the learned Single Judge has not answered this issue which was specifically raised and noted by him. If the judgment of the division bench had not adjudicated the seniority list of LDA's then the argument that the learned Single Judge has issued directions for modification of the said list which had already been upheld by this Court may not be correct. The learned Single Judge has issued directions for modification of the list of 1991 after the seniority list was published on 2.11.2000 which was also under challenge. It is for this reason that the same has been

quashed but the question still remains as to whether the learned Single Judge could have entertained a challenge to the said seniority list of 1991 at the behest of those who have arrived in the cadre between 1997 and 1999 after a long lapse of time.

95. To our mind, if these persons were not even born into the cadre, then after a lapse of six or seven years, it would be difficult to allow the entertaining of any such dispute unless it can be shown that the very appointment of those who are claiming seniority by virtue of the said list are not in accordance with law. Coupled with this a further question arises as to whether the order of regularization dated 23rd July, 1990 of such employees who have been given the benefit of seniority can still be questioned. If the order of regularization cannot be allowed to be challenged, then the consequential fixation of seniority cannot be allowed to be disturbed unless it can be shown that the status of such appointment is by way of promotion or is otherwise either beyond the cadre strength or de-hors the rules.

96. It is here that the argument of the strength of cadre and the recruitment of such persons far beyond the strength of cadre has to be considered as to whether it would allow them to claim a place even if they are beyond the cadre strength of Lower Division Assistants and if so whether they can be still given the benefit of seniority. The question also is that can a collateral challenge be now permitted to be raised in respect of the recruitment through the regularization rules of 23rd July, 1990.

97. The first question that has to be addressed to is the maintainability of the writ petition filed by the respondent writ petitioners challenging the seniority accrued in favour of those Lower Division Assistants who were extended the benefit of the Regularization Rules dated 23rd July, 1990. This is admitted that the respondent writ petitioners were born into the cadre between 1997 and 1999. Thus when the said rules were promulgated and the benefit of regularization was given under the rules dated 23rd July, 1990 coupled with the post creation orders on 6.8.1990, the respondent-petitioners having not been born into the cadre, did not have any occasion to raise any such challenge. This does not mean that they are precluded from raising a challenge to the seniority if it affects them as and when they enter into the cadre. At this juncture one of the arguments advanced by Sri Prashant Chandra deserves mention. His contention is that unless the very regularization order dated 23rd July, 1990 is challenged, the consequential seniority of such candidates also cannot be challenged. For this it is on record that there was no challenge raised to the regularization order dated 23rd July, 1990 by the respondent writ petitioners. They after the disposal of the writ petition and the pendency of the present appeal filed by the State for four years in 2008 filed an amendment application seeking to challenge the said regularization order on the ground of it being invalid and contrary to the 1942 Rules.

98. This challenge to the validity of the 1990 Regularization Rules now at this

stage cannot be permitted to be raised for several reasons. The first is that the respondent writ petitioners even though described the 23rd July, 1990 Rules to be unconstitutional in Paragraph 8 of the writ petition yet no relief for quashing of the same was prayed for in the writ petition. It was only the consequential seniority the quashing whereof had been prayed. Sri Jain, learned counsel for the petitioners contends that a challenge having been pleaded, the Court can always mould the relief in exercise of powers under Article 226 of the Constitution, which powers continue with this Court in the present appeal, and it is for this reason that an application for amending the relief further praying for quashing of the same was moved in 2008.

99. We are unable to accept this plea primarily for the reason that such an amendment is highly belated and that too even after the writ petition was allowed in favour of the respondent-petitioners. The writ petitioners did not file any appeal praying for any further relief and they appear to have been satisfied with the quashing of the seniority list. Thus there was no intention to challenge the regularization rules dated 23rd July, 1990. The statement of fact made in Paragraph 8 of the writ petition by itself would not render a positive challenge raised without anything further. The respondent writ petitioners after the writ petition was allowed did not pursue this challenge at all and after four years of the pendency of the appeal, as a respondent, have moved an amendment application which otherwise cannot be entertained. Thus for laches and for the aforesaid reasons, this relief as prayed for to be moulded in their favour now cannot be considered on behalf of the respondent writ petitioners. The regularised LDA's have been conferred a benefit of regular appointment under the 1990 Rules and the same has become final it cannot be permitted to be reopened.

100. There is yet another reason for the same. As noted above, the validity of the said rules was also raised by those who were contesting the seniority of Upper Division Assistants in Writ Petition No. 6200 of 1993 decided on 23rd July, 1990. Secondly the process adopted for selection and regular appointment under the said rules was also agitated therein. The division bench in the aforesaid judgment has answered the plea so raised by repelling the contentions and also upholding entire selection process under the regularization rules of 1990 in the following terms:

"As far as the contention of the Direct Recruits regarding validity of Regularization Rules, 1990 is concerned, it is misconceived, inasmuch as, Regularization Rules, 1990 derives its authority and force from Article 309 of the Constitution of India, hence it cannot be said that the rules are not statutory. The State Government in exercise of power under Article 309 of the Constitution, has been vested with a power to frame the rules and there exists no requirement to consult the Commission in that regard.

As far as next submission regarding the regularization of the services of the promotees on the same date when the rules came into force is concerned, as

well as that the record being not placed before the Selection Committee etc. on behalf of the State Government, it was vehemently argued by Mr. Yogeshwar Prasad that the point raised before the Court pertains to determination of the question of fact which cannot be agitated upon because there is a presumption in favour of the State action with regard to its correctness and fairness. Question of regularization was pending before the State Government much earlier to 1990. The State Government in that regard framed rules of Regularization in the year 1989, itself. Although the record of petitioners (promotees) services etc. were prepared in advance even before the Regularization Rules, 1989, but the services were regularized due to certain defect pointed out in that rule. Thereafter, Regularization Rules, 1990 were issued on 23.7.1990. The charts which were prepared in advance on the basis of the service record, were produced before the selection committee and after due application of mind the selection committee regularised the services of the promotees.

We are of the view that this Court in exercise of its jurisdiction under Article 226 of the Constitution of India, cannot adjudicate upon such contentious disputes. Hence, for that reason the regularization of the promotees cannot be annulled. During the course of arguments, a vain effort has been made to challenge the Regularization Rules, 1990, but no serious effort was made to assail the Rules, itself. As pointed out earlier the State Government in exercise of its power vested under Article 309 of the Constitution of India, issued the Regularization Rules, 1990 which is more or less similar to Regularization Rules, which were subject-matter of dispute before Hon"ble Supreme Court in P.D. Agrawal (supra), which was upheld by Hon"ble Supreme Court. The said rule cannot be challenged on the ground of its being violative of Article 14 and 16 of the Constitution of India. Hence, we hold that the Regularization Rules, 1990 is valid and regularization made under the Rules does not suffer from any legal or constitutional defect."

101. The said judgment in its entirety, subject to a slight modification for fitment, has been upheld by the Apex Court and accordingly so far as the validity of rules and the selections by way of regularization has already become final. We therefore sitting in a coordinate bench cannot now reagitate or reopen the said issue when the said judgment has been upheld by the Apex Court through a speaking order. The amendment sought by the respondent writ petitioners in the present writ petition stands rejected and it is held that the selections and regular appointments under the Government Order dated 23rd July, 1990 has attained finality.

102. The next question is as to what extent the said judgment dated 23rd July, 1990 should be treated as final. A reading of the division bench judgment would clearly indicate that most of the arguments that have been advanced before us were neither canvassed nor were even considered by the division bench in relation to the dispute of seniority as is now involved in respect of Lower Division Assistants. The impact of the 1942 Rules, the consequences arising out of the 1990 Regularization Rules vis-a-vis seniority of Lower Division Assistants and the

determination of seniority applying the 1991 U.P. Government Servants Seniority Rules do not appear to have been dealt with in the manner in which it has been placed before us. That decision was clearly in relation to Upper Division Assistants and a case is an authority for would it actually decides. The issue of different modes of recruitment as Lower Division Assistants and their consequential seniority was not the subject-matter of dispute before the said division bench.

103. It is correct that the validity of the 1990 Regularization Rules had been raised therein and to that extent, we have already held that the validity of those rules cannot be reopened, but so far as the seniority dispute of LDAs are concerned that in our opinion was not an issue nor it has been concluded by the aforesaid division bench judgment. Thus the contention of Sri Prashant Chandra that certainty and finality stands attached to every aspect arising out of the 1990 Regularization Rules does not appear to be correct in so far as it relates to an inter se seniority dispute of Lower Division Assistants. The said division bench judgment therefore is no impediment in the consideration of the dispute relating to the seniority of the Lower Division Assistants.

104. Then there is another vexed question about those persons being not impleaded as parties by the respondent writ petitioners in the present proceedings. This aspect has to be dealt with on the basis of the judgments that have been cited at the bar relating to non-joinder of the necessary parties. It is settled that a non-joinder of a proper party may not be fatal but non-joinder of a necessary party may render different results. The respondent petitioners contend that they were challenging the criteria and policy of fixing seniority under the 1990 Rules on a wrong premise namely by treating them to be direct recruits and not promotees. The respondent petitioners alleged the LDAs who were regularized under 1990 Rules to be promotees, and in this background they contend that this foundation of not treating them as promotees renders the exercise undertaken by the State to be invalid. In this backdrop, they contend that it was not necessary to implead them as parties as it was the wrong policy of the Government which was under challenge.

105. From the judgments that have been cited at the bar, we find that the respondent petitioners rely on two decisions of the Apex Court namely the The General Manager, South Central Railway, Secunderabad and Another Vs. A.V.R. Siddhantti and Others, AIR 1974 SC 1755 : (1974) 28 FLR 231 : (1974) 1 LLJ 312 : (1974) 4 SCC 335 : (1974) 3 SCR 207 : (1974) 1 SLJ 576 to contend that it was not necessary to implead the said employees. The ground of challenge raised is the wrong application of the rule as being violative of Article 14 and 16 of the Constitution of India as contrary to the rules itself. The Apex Court found that no list or orders fixing seniority fixation beyond individuals had been challenged. However, in the instant case, the seniority list has been challenged as well. The second decision relied on is in the case of A. Janardhana Vs. Union of India (UOI) and Others, AIR 1983 SC 769 : (1983) LabIC 849 : (1983) 2 LLJ

175 : (1983) 1 SCALE 443 : (1983) 3 SCC 601 : (1983) 2 SCR 936 : (1983) 1 SLJ 564 . The issue has been dealt with by observing that only about 400 officers had been impleaded therein but the main relief was claimed against the department. In the instant case also main relief claimed is against the wrong approach of the State Government.

106. Sri Prashant Chandra however has placed before the Court the judgment in State of Uttaranchal and Another Vs. Madan Mohan Joshi and Others, (2008) 3 CLT 610 : (2008) 8 SCALE 491 : (2008) 6 SCC 797 : (2008) 2 SCC(L&S) 197 to urge that non-joinder of parties is fatal as civil consequences ensue and it is not only a case of interpretation but also involves the seniority list that is under challenge by the respondent petitioners. The said judgments therefore indicate that impleadment of necessary parties is required and their non-impleadment would therefore entail such consequences that are likely to affect the seniority of other employees.

107. The peculiar situation of this case is that it is correct that the affected employees were not impleaded nor were even arrayed in representative capacity through any individual but from behind the screen a complete comprehensive defence had been put up by the State to defend the seniority list in its entirety. The State does not appear to have pressed such a point of their impleadment before the learned Single Judge nor is it contained in the counter-affidavit. The grounds of appeal do not spell out any such grievance. It is for the first time that this argument has been advanced orally on behalf of the State. The question of impleadment had not arisen when the petition had been initially filed as the impugned seniority list and the order both were passed later on that were incorporated by amendments.

108. Apart from this, even after the writ petition was entertained such affected persons did not choose to file any impleadment in the writ petition or file any special appeal assailing the judgment of the learned Single Judge dated 6.8.2004, even though as a consequence of the said judgment seniority has been redetermined and refixed on 21st October, 2005. It is not understood that in spite of having knowledge of the consequences of the judgment, why did such affected persons not challenge either the judgment of the learned Single Judge or even the placement that has been published pursuant to the impugned judgment. It is only the State Government which has filed the present appeal which means that the State is fully representing the cause of such employees.

109. Apart from this, the State has threadbare laid its policy and has assailed the decision of the learned Single Judge on the ground that the learned Single Judge has wrongly treated the regularised LDAs as promotees. This itself is a ground of policy as to whether such regularized persons are being correctly treated by the State as direct recruits or promotees. In this peculiar background when the matter is being contested tooth and nail, the said affected employees even today have not come forward with any such plea. Thus the affected necessary party, has not raised any such dispute of their non-joinder in the present case.

110. In our opinion, the question raised before the learned Single Judge is a question of correct interpretation of the Regularization Rules dated 23rd July, 1990 and therefore in such a situation all the employees were not required to be impleaded. The case of the Apex Court and its ratio in V.P. Shrivastava and Others Vs. State of M.P. and Others, (1996) 2 JT 374 : (1996) 1 SCALE 805 : (1996) 7 SCC 759 : (1996) 2 SCR 59 is attracted on the facts of the present case.

111. For all the aforesaid reasons, non-impleadment would not be fatal more so when the contention of such affected persons as represented by the State is being accepted by us to the effect that they are not promotees, and that their seniority would be governed treating them to be direct recruits. Thus no prejudice is caused to them, and rather, their interest is not being jeopardized.

112. There is yet another peculiar dimension that deserves notice. We have been apprised of facts that indicate a necessity for exercise of certiorari. The Court therefore cannot deny a writ if the injustice would cause a greater miscarriage of justice due to denial of interference. The judgment impugned has brought about consequences that has manifested itself into making a person junior who is otherwise Senior. The chart placed on behalf of the State by Sri Chandra leaves no room for doubt that an absurd result has followed with the new seniority list which is an outcome of the impugned judgment. This factual perversity could not be countered by the learned counsel for the petitioner. Similarly learned counsel for the State appellant could not justify the preparation of a seniority list on 2.11.2000 nor could the decision dated 21.11.2000 be justified as they both appear to have not been rationalized after following the procedure as enunciated by us in this judgment. Thus both ways, the determination of seniority either under the impugned lists and orders before the learned single judge or the impugned judgment itself, are unsustainable. Merely allowing the appeal would not therefore solve the problem. The infirmity cannot be perpetuated. In such a situation, the error as pointed out by both parties require to be set at rest. In the said background a relief that is equitable and is necessary to remove manifest injustice deserves to be granted even if there is a flaw of formal non-joinder of necessary party, moreso in the background that the state is defending the same cause of such formal unrepresented persons who would not be prejudiced as they would have a right of hearing before the list is finalized.

113. Even otherwise we are not formally quashing the list of 29.7.1991 and 25.7.1991 but we are issuing directions for their modification in case so required after re-determination as per the terms of determination as spelt out herein. The seniority therefore shall be maintained after a decision is given on also hearing those who were not arrayed as respondents in the petition, as such their non-joinder would not result in any adverse position, and rather the correct placements would ensue. The proceedings before the learned single judge in the writ petition would not fail in these peculiar facts and also in view of the ratio of the case of V.P. Shrivastava and Others Vs. State of M.P. and Others, (1996) 2 JT 374 : (1996) 1 SCALE 805 : (1996) 7 SCC 759 : (1996) 2 SCR 59 as noted

above.

114. The next question is about the locus of the respondent petitioners to challenge the seniority list. The cause of action to the respondent petitioners came into existence when they appear to have filed the present writ petition before the seniority list dated 2.11.2000 had been published. An interim order was passed on 31.10.2000 calling upon the State to decide their objections as well. The State Government as on record proceeded to finalize the seniority list dated 2.11.2000 without referring to the interim direction of the High Court. The respondent-writ petitioners then filed an application on 10.11.2000 before the State alongwith a certified copy of the interim order dated 31.10.2000 whereupon this representation came to be rejected with additional reasons on 21.11.2000. The respondent writ petitioners by way of an amendment challenged the seniority list dated 2.11.2000 as well as 21.11.2000 alleging that these lists have been issued treating the earlier lists dated 24th July, 1991 and 25th July, 1991 to be valid and therefore all these three lists and order dated 21.11.2000 deserve to be quashed.

115. The contention of the appellant State is that the list of 1991 was challenged after almost 9 years and a belated challenge should not be entertained beyond a reasonable period for which reliance has been placed by the State on several decisions including the decision in the case of Shiba Shankar Mohapatra and Others Vs. State of Orissa and Others, AIR 2010 SC 706 : (2010) 124 FLR 3 : (2009) 14 JT 298 : (2009) 13 SCALE 689 : (2010) 12 SCC 471 : (2011) 1 SCC(L&S) 229 : (2009) 16 SCR 866 : (2009) 6 SLR 483 : (2010) AIRSCW 348 : (2009) 7 Supreme 424 (Paragraphs 18, 21, 29 to 32) and the latest decision of the Apex Court in the case of Union of India (UOI) and Others Vs. Major S.P. Sharma and Others, (2014) 3 JT 611 : (2014) 3 SCALE 484 : (2014) 6 SCC 351 (Paragraphs 73 to 83) apart from other decisions.

115-A. Having considered the same, the facts of the present case reveal that the issue relating to the fixation of seniority of the regularized LDAs under the Government order dated 23rd July, 1990 had been earlier indicated in the lists of 24th July, 1991 and 25th July, 1991 that was revisited by inviting objections, and therefore, after the respondent writ petitioners were inducted and born into the cadre in 1997 and 1999, the State Government itself issued the lists inviting objections. The order dated 2nd November, 1990 categorically records that 90 objections were received in all and the issue relating to extending the benefit of seniority to the regularized LDAs under the 1990 Rules was also one of the issues. To our mind, the respondent petitioners were born by that time in the cadre and they did have a cause of action and a locus to challenge the seniority as they were contending that such regularized LDAs were promotees and therefore they should be subjected to the quota rota rule as against the direct recruits, and their seniority should be pushed down. The objections were however rejected on 2.11.1990 without meeting the issues raised even though there was an interim direction of the High Court dated 31.10.2000 to consider

their objections.

116. It appears that the State Government complied with the interim directions immediately thereafter and upon an elaborate consideration rejected the same on 21.11.2000. This rejection order also categorically spells out the objections and its decision in relation to the seniority of regularized LDAs by a speaking order. The objections of the respondent petitioners was neither rejected on the ground of delay, laches or locus and to the contrary they were rejected on the merits of the contentions raised including the rule of seniority as applicable to the controversy. The decision dated 2.11.2000 is an exhaustive decision on this issue which is contained at Item No. 3 of the consideration of the representation of the respondent petitioners. A conjoint reading of the interim order of the High Court dated 31.10.2000, the disposal of the objections and the promulgation of the seniority list on 2.11.2000 and the rejection order dated 21.11.2000, leave no room for doubt that a clear cause of action arose to the respondent petitioners to challenge the issue of seniority in the year 2000 itself. In such a situation and in view of the facts as indicated above, the judgments relied upon by the learned counsel for the State indicating delay on their part does not hold water as the locus was very much available to the respondent petitioners and they did not loose any time in challenging the same before this Court. Thus their dispute is neither belated nor founded on any laches. The question of delay as argued on behalf of the State therefore is to be rejected on the facts of the present case as the objections to the seniority have been raised within a reasonable time.

117. Another argument which has been advanced on behalf of the appellant State is about raising a challenge to seniority without challenging the regularization order which itself spells out the mode of determination of seniority.

118. Having considered the same we find that it is correct that the regularization Government order dated 23rd July, 1990 was criticized by the writ petitioners but no relief was prayed for in that regard. We also refuse the relief on that count in the amendment sought by the respondent writ petitioners and for the reasons recorded in the present judgment, but the fact remains we have found that the respondent petitioners were entitled to raise the dispute of seniority as they are direct recruits. The ground of challenge raised by the respondent petitioners is founded on the premise of treating the regularized LDAs as promotees. If their challenge could succeed then the limited issue of seniority can be quashed on such a ground without interfering with the regularization order as it is the interpretation of the operational execution of the 1990 Rules, not the vires thereof. The contention of Sri Chandra therefore on the strength of the judgments relied upon by him would not apply on the facts of the present case.

119. The learned Single Judge did treat the regularised LDAs as promotees and allowed the writ petition even though we have reversed the said issue but we still hold that it was not necessary for the respondent petitioners to have challenged the regularization order as they are simply seeking the fitment of regularized

LDAs treating them to be promotees on an interpretation of the rules dated 23.7.1990. This therefore does not preclude them from questioning the seniority on this ground.

120. Coming to the most crucial question that has been raised is that of the presence or absence of concept of promotion in the 1942 Rules or promotion being given under the Rules of 23rd July, 1990. If Rule 14 and Rule 24 are read in isolation, then it does give the impression that they are modes of promotion and to that extent the judgments relied upon by Sri Anil Tiwari, learned counsel for the respondent petitioners supports such a contention, but at the same time we have to read the entire 1942 Rules for the said purpose, and when we do so, we find that there are separate modes provided no doubt, but the mode for recruitment of Lower Division Assistants is by way of a provision under Rule 14 and 24 and not by way of promotion. To the contrary Rule 5 itself spells out different modes of recruitment where the word promotion has been consciously used by the rule making authority. In Part-3 Rule 5 the sources of recruitment are described as follows:

PART III RECRUITMENT

Rule 5. Sources of recruitment--Recruitment to the staff shall be made as follows:

121. This has to be read with the segregation of cadres under Part-2 of Rule 3 of the 1942 Rules, which is quoted hereinunder:

PART II-CADRE

Rule 3. Strength of the Staff--(1) The strength of the staff both permanent and temporary, shall be such as may be determined by the Governor from time to time:

Provided that the appointing authority may leave unfilled or hold in abeyance any vacant post in any cadre without thereby entitling any person to compensation.

Note--The present sanctioned staff consists of the following separate cadres:

(ii) The staff as a whole does not constitute one service. The classes of posts enumerated under the heading "(A) Superior" in the Note above are not interchangeable one another nor with the posts of stenographer. Members of a lower class have no right to posts in a higher class except to the extent indicated in these rules.

122. The aforesaid two rules have to be read alongwith Rule 2(f) which defines direct recruitment to mean recruitment made otherwise than by promotion.

123. The aforesaid definition of the word direct recruitment means recruitment made otherwise than by promotion. Rule 5 read with Rule 3 indicates existence of 4 separate cadres that is:

A- Superior that includes Upper Division Assistants (including Assistant Superintendents), Translators (including Assistant Superintendents and

Journalists).

B- Subordinate which includes at Serial No. 4 Lower Division Assistants.

C- Stenographers

D- Miscellaneous Petty Posts.

124. For the Superior Posts of Upper Division Assistants and Translators source of recruitment is by competitive examination to be conducted by the Commission except provided in Rule 21 and Rule 12. Rule 21 reserves posts of Lower Division Assistants to the extent of 33% vacancies by selection but not by promotion. Similarly in the case of Translators, under Rule 12 where also through a competitive examination certain number of posts have to be filled up through departmental candidates but the word promotion has not been used there also.

125. Then comes the next cadre of subordinate. There is a marked departure in the said cadre which prescribes the source of recruitment for the post mentioned at Serial No. B-1 and 2 to be filled by promotion under Rule 27 in consultation with the Commission. Similarly, Item No. B-3 is also to be filled up by promotion under Rule 28. Thus Rule 27 and 28 indicate promotions that are to be made from amongst the subordinate cadre. In Group-C of Stenographers and Group-D of Miscellaneous Petty Posts again the word promotion is absent. Thus the rule making authority has consciously provided for promotion in three categories of posts under the subordinate cadre only and as indicated above and to be processed through Rule 27 and Rule 28 of the 1942 Rules. No avenue of promotion has been provided particularly for the post of Lower Division Assistants who are to enter by way of competitive examination or through the provisions of Rule 14 and 24. The rules aforesaid leave no room for doubt that the rule making authority was conscious of the word promotion while framing the said rules and it has specifically provided for separate rules of promotion wherever required and clearly intended.

126. It is by now settled that while interpreting a statute or any statutory provision the literal and purposive rule of interpretation can be employed. The literal rule can be employed where the rule is specific and the purposive rule for seeking the intention can be employed to find out as to what the rule making authority intended to do. The Court has therefore to discover as to whether Rule 14 and 24 are rules of promotion and if not whether they fall within the definition of direct recruitment under Rule 2(f). Looking to the language as deployed in Rule 5 itself we find that wherever the rule making authority thought fit, it uses the word promotion but for recruitment of Lower Division Assistants it is either by way of competitive examination conducted by the Commission or through the provisions of Rule 14 and 24. It is thus clear that on a bare perusal of the said provisions and a comparative study of the intention of the rule making authority, within the subordinate cadre itself, it is established that promotion was only intended for the first three categories of subordinate posts whereas the same was not intended for the fourth category i.e. Lower Division Assistants.

127. We cannot therefore stretch the language used and we have to adopt the literal approach in construing that the word provision used for Lower Division Assistants for recruitment through Rule 14 and 24 does not indicate promotion. It cannot be said that the rule making authority was not conscious of the word promotion and therefore it used the word provision loosely to mean promotion. Having said so, we may now turn to Rule 14 and 24 and we find that here also even though the rule provides for selection on an assessment and suitability through a qualifying examination as well as a two fold scrutiny, yet the word promotions are categorically absent. Thus the 1942 Rules do not make any provision for promotion to the post of Lower Division Assistants which is confined only to the other posts mentioned in Rule 27 and 28.

128. The rules of 1942 therefore exclude any avenue of promotion to the post of Lower Division Assistants even though selections to the said posts by way of Rule 14 and 24 by giving reservation to a particular percentage of seats in special circumstances has been given. The State Government is also obliged to make such selections under Rule 24 but at the same time the said obligation cannot be spelled as a rule for promotion. This discretion in the State Government to select Lower Division Assistants from amongst his employees is therefore another mode of recruitment.

129. Apart from this, promotions are made within the cadre. The subordinate cadre is a separate cadre as defined in Rule 3 and the said posts are at the lowest rank. Thus the post of Lower Division Assistants has to be filled up by way of selections either through competitive examination conducted by the Commission or through Rule 14 and 24. The rule making authority appears to have envisaged a situation where the Commission may not be able to make selections or selections through competitive examination would otherwise may not be in the offing, and in such a situation in special circumstances selection can be resorted to under Rule 14. It is true that under Rule 24 it is an obligation but only in relation to very limited vacancy which has to be given every alternate year to particulars posts. In the instant case it has been stated that Rule 14 or Rule 24 was never invoked to employ those who have been give the benefit of regularization rules dated 23rd July, 1990.

130. We may therefore now turn to the 1990 Rules. On 23rd July, 1990, the regularization rules came into force and the same was framed to cater to a person who was initially appointed to the post of Typist or Telephone Operator or Telephone Printer Operator or Telex Operator or Junior Grade Clerk on a regular basis and was subsequently "promoted" in an officiating capacity to the post of LDA. The consideration of such person would be for regular appointment in accordance with the selection procedure prescribed therein. Such appointments were to be treated and deemed to be appointments under the Service Rules, 1942. The question is whether such appointment is promotion or is a selection or is another mode which means direct recruitment.

131. We have perused the rules and we find that appointment is a regular

appointment through a selection but such regular appointment is available only to those who were initially appointed on particular posts as referred to hereinabove on regular basis. They were to be offered appointment only if they were working in an officiating capacity on the post of Lower Division Assistants. The word "promoted" used in the rules dated 23rd July, 1990 as a matter of fact has to be read in consonance with the 1942 Rules. We have not able to find out any rule of promotion in officiating capacity under the 1942 Rules. In the absence of any rule of promotion in an officiating capacity, use of such words in the 1990 Regularization Rules, cannot be treated to be an appointment by way of officiating promotion. To the contrary, the words "promoted on an officiating basis" means allotted work and discharge of duties in an officiating capacity.

132. In the absence of any rule of promotion by way of officiation the holding of a post on officiating basis cannot be termed as promotion. Thus this rule by itself does not confer a promotional status to an LDA if he is regularised under Rules of 1990. To the contrary, the rules make it clear that they shall be considered for regular appointment and not for being promoted on the post in question.

133. This being the position of the 1990 Rules, either way, namely under the 1942 Rules or under the 23rd July, 1990 Rules, there is no rule for promotion to the post of LDA. Thus those who have been given regular appointment under the Government Order dated 23rd July, 1990 as an LDA, the same is only by way of appointment which is no promotion and consequently reverting back to the definition contained in Rule 2(f) which are the 1942 Rules applicable, the said recruitment through regularization is direct recruitment and not promotion.

134. Once having held that the regularised Lower Division Assistants are not promotees, the question that remains to be answered is as to what rules of seniority have to be applied and in what manner? A perusal of the determination of seniority dated 2.11.2000 and the rejection of the representation on 21.11.2000 indicate a reference to the 1942 Rules and to the U.P. Government Servant Seniority Rules, 1991. However, a mere reference to the Rules without applying the same in terms of the entry of an incumbent into the cadre does not appear to have been spelt out categorically. We have already held that a person would be entitled to get his seniority counted only from the date of entry into his cadre which in turn would be dependent upon the availability of the vacancy against which the incumbent has been appointed in accordance with the Rules. Thus, the first step is the determination of the vacancy and then the date of entry of the incumbent into the cadre on substantive basis. Seniority under the 1942 Rules is provided for in Rule 46 which is quoted hereinunder:

"46. Seniority--The seniority of a member of the staff ordinarily be determined in the class to which he is appointed by the date of his substantive appointment and in the case of more than one person appointed in the same date according to their respective positions in the waiting list.

Provided that the seniority of such members of the staff as were holding

substantive appointments in the Government Estate Department immediately before April 1, 1965 shall in consequence of the merger of that Department with the Uttar Pradesh Secretariat be determined in such a manner that for every two years of service rendered by them in a substantive capacity in that Department before the said date, they shall be allowed the benefit of one year's substantive service, and their seniority vis-a-vis the other members of the staff shall be fixed accordingly."

135. The Lower Division Assistants who were regularised on 23.7.1990 were also extended the benefit of seniority by virtue of Rule 7 of the said Rules of 1990 quoted hereinunder:

"7. A person appointed under these rules shall be entitled to seniority in accordance with the Service Rules and for this purpose selection under these rules shall be deemed to be selection under the Service Rules:

Provided that the inter-se seniority of the candidates so appointed shall be the same as it was in the cadre from which they were promoted on an officiating basis."

136. The said rule clearly indicates that seniority would be in accordance with the Service Rules as the selections are under the Service Rules. The word "Service Rule" has been defined under Rule 3(6) of the Regularization Rules to mean the Uttar Pradesh Secretariat Ministerial Staff Rules, 1942. Rule 2 thereof specifically states that they shall have effect notwithstanding anything to the contrary contained in any other rules or orders. Thus, the seniority of those who were regularised under the said rules in 1990 has to be determined as per Rule 46 of the 1942 Rules upon determination of vacancy as per the 1942 Rules read with the 1991 Seniority Rules. This determination of vacancy has however to be calculated in accordance with the definition of the word "Available Vacancy" contained in Rule 3(2) of the 1990 Regularisation Rules extracted hereinunder:

"(2) "Available Vacancy" means a Vacancy for which no candidate has been recommended by the Commission before the date of notification of these rules."

137. The word "Available Vacancy" has been defined to mean a vacancy against which no candidate has been recommended by the Commission before the date of notification of the said rules on 23.7.1990.

138. The vacancy has to be one which has been determined under Rule 11 of the 1942 Rules. Rule 11 of the 1942 Rules is extracted hereinunder:

"11. Number of vacancies to be filled.--The appointing authority shall annually ascertain the number of vacancies available at the commencement of a year and also those expected to occur during that year in the posts of Upper Division Assistants, Translators, Lower Division Assistants and Stenographers and accordingly intimate to the Commission the number of vacancies intended to be filled on the results of the examination or selection, as the case may be, to be held that year, indicating also the number of posts reserved in each category

under rule 6 for candidates belonging to Scheduled Castes."

139. In order to calculate the vacancy, therefore, one will have to go back to the availability of the vacancy prior to the enforcement of the said rule which vacancies have to be such so that a person can claim his substantive appointment against such vacancy. The reason is that seniority would be given only from the date of substantive appointment against such a vacancy. This determination for all such candidates who have been regularised will therefore have to be made by preparing a separate chart indicating as to how and when the vacancy became available.

140. This is necessary as the vacancies came to be created vide Government Order dated 6.8.1990 apart from the vacancies which were existing. The first thing therefore to be done is as to which were the vacancies that were available on 23.7.1990. So far as their subsequent adjustment is concerned, the same can only be from the date any vacancy is made available. This peculiar situation has arisen because of the fact that the regularization rules have been enforced even prior to the declaration of the vacancies on 6.8.1990 which do indicate the dates from which they have been made available to the incumbents. The question is that the available vacancy has to be against such a vacancy for which no candidate had been recommended by the Commission before the notification of the Rules. The criteria therefore again will have to be as to whether the vacancy was available so as to cover the regularised appointments envisaged under the notification dated 23.7.1990. It is only then that seniority can be claimed by the incumbent under Rule 46 of the 1942 Rules read with Rule 7 of the 1990 Regularisation Rules and the 1991 Rules of Seniority from the date of substantive appointment. This determination does not appear to have been done from a perusal of the impugned seniority list dated 2.11.2000 and the rejection of the representation on 21.11.2000. Consequently, the seniority will have to be redetermined by following this criteria and explicitly indicating the facts as per the aforesaid criteria separately. This calculation therefore from the date of the entry in the cadre as per available vacancy has to be revisited as it does not appear to have been done by the appellant-State. At least the same does not appear to be clear either from the impugned lists or orders or from the counter-affidavit filed on behalf of the State before the learned Single Judge.

141. Apart from this, neither the learned Single Judge has touched this issue of providing seniority from the date of entry into the cadre nor has the division bench judgment dated 2.7.1996 taken notice of the aforesaid rules for determination of seniority in respect of the Upper Division Assistants. However, even though the dispute of Upper Division Assistants has attained finality, yet this aspect in relation to Lower Division Assistants was neither considered therein nor has it been determined by the State Government as indicated above. Consequently, the determination accordingly is an exercise which will have to be undertaken for resolving the dispute between the respondent-petitioners and those who have been regularised under the 1990 Rules.

142. There is one more aspect which has to be adopted while determining seniority, namely, the determination of seniority on account of the U.P. Government Servant Seniority Rules, 1991 coming into force. This is necessary because the said Seniority Rules of 1991 came into effect from 23.3.1991 and the seniority lists were prepared initially on 24.7.1991 and 25.7.1991. Thus, the Seniority Rules had come into force by the time the seniority list had been issued. Consequently, the impact thereof has also to be taken into account as the provisions of reservation or of any other criteria mentioned in the said rules could not have been ignored. The candidates who came to be appointed on substantive basis after 23.3.1991, their seniority would be governed by the 1991 Rules as they have an overriding effect over all other rules of seniority. This aspect has also escaped notice of the learned Single Judge for modulating the seniority in terms thereof.

143. Accordingly, the State Government will now have to undertake an exercise in the light of the aforesaid principles and redetermine the seniority as they would have an impact on the consequential benefits to which the respondent-petitioners may be entitled or their adversaries would be entitled as a result of such determination.

144. Having regard to the reasons given by us hereinabove, the position that emerges is:

1. That the writ petitioners did have a cause of action as their objections *vis* the seniority of those LDAs" who were regularised vide order dated 23rd July, 1990 against posts created on 6.8.1990, adversely affected the respondent-petitioners with the promulgation of the seniority list on 2.11.2000 and the rejection of the representation on 21.11.2000. We further hold that the petition of the respondent-petitioners is not barred by laches for all the reasons recorded hereinabove nor have they delayed the filing of the writ petition as the cause of action arose to them only after the lists and orders were issued on 2.11.2000 and 21.11.2000 respectively.

2. The division bench judgment dated 2nd July, 1996 in the case of U.P. Secretariat, UDA Association and 7 others v. State of U.P., Writ Petition No. 6200 of 1993 as affirmed by the Supreme Court in the decision in Special Appeal No. 25086 of 1996 decided on 27.1.1997 by the Apex Court and in U.P. Secretariat UDA Association v. State of U.P. and others, 1999 (1) SCC 278; has attained finality as in relation to Upper Division Assistants, subject to the direction issued by the Apex Court to the effect that promotees are also required to be fitted into service from the date when they are entitled fitment in accordance with the quota and rota prescribed under the rules, but at the same time the said judgment would not be an impediment for the reasons given in our judgment hereinabove for determining the limited issue of seniority of the Lower Division Assistants.

3. The status of the employees who have been regularized under the

Regularization Rule dated 23rd July, 1990 and have been appointed under the post creation order dated 6th August, 1990 are not promotees and can only be treated as direct recruits for the reasons given in the judgment hereinabove. The presumption raised and the finding recorded by the learned Single Judge to that extent stands reversed.

4. In view of our findings and conclusions that the candidates who fall under the Regularization Rule of 1990 are not promotees and are direct recruits, there is no reason to apply the quota and rota rule for promotees for them.

5. For the reasons given by us hereinabove, we also hold that the State Government has not been able to establish about any exercise of having undertaken for determining the vacancies under Rule 11 of the 1942 Rules as per the cadre strength defined under the rules. This exercise will also have to be undertaken to first determine the vacancies that are available in Rule 3(2) of the Regularization Rules of 1990 in order to determine as to whether the appointments by way of regularization have been offered against the substantive vacancies available with regard to which no candidate had been recommended by the Commission before the notification of the said rules on 23rd July, 1990. The argument of the learned counsel for the respondent-petitioners that in order to claim seniority those who have been regularized, their induction into the cadre and date of entry upon being appointed in a substantive capacity against a substantive vacancy has to be determined before extending to them the benefit of seniority, is accepted.

6. For this the status of post creation or availability of the post in the cadre, the vacancies determined as per rules and then the placement according to the date of substantive appointment will have to be determined.

7. So far as those who have been extended the benefit of 15% promotion from the post of Group-D/Class IV Employees, their status stands determined by the introduction of sub-rule (4) of Rule 14 of the 1942 Rules as introduced on 5.11.1990 and therefore they have to be allocated their space as per their appointment under the aforesaid provision.

145. In view of the conclusions drawn hereinabove and the reasons in support thereof, we allow Special Appeal No. 31 of 2005 and set aside the judgment dated 6th August, 2004 but at the same time we also grant relief to the writ petitioners to the extent of allowing the writ petition and quashing the final seniority list dated 2nd November, 2000 as well as the rejection of the representation of the writ petitioners vide order dated 21st November, 2000. All consequential action taken pursuant to the judgment dated 6.8.2004 would also stand annulled including the seniority list dated 21.10.2005.

146. As a consequence of the aforesaid relief having been extended, we further clarify that the seniority list of the Lower Division Assistants shall be redetermined in the light of the observations made hereinabove and the principles that have been spelled out in this judgment as well as the rules and

regulations applicable as per the law prescribed and after the exercise is completed, the list of 24.7.1991 and 25.7.1991 would stand modified accordingly if necessary as a fall out of such exercise. This exercise shall be undertaken by the State Government and concluded preferably within a period of three months and till such exercise is concluded no fresh third party rights should be created till finalization of the seniority as per this judgment. So far as the consequential action taken by the State Government pursuant to the impugned judgment dated 6th August, 2004 is concerned, since the judgment has been set aside, any action taken on the strength thereof also falls through.

C.M. Application No. 81000 of 2008.

147. This amendment application has been moved by the respondent-petitioners seeking a relief in respect of the validity of the Rules of 23.7.1990.

148. We have already observed in our judgment delivered today with reasons in support thereof that it would not be possible to allow raising such a challenge in view of the delay, laches and also the binding effect of the judgment dated 2.7.1996 of the Division Bench in Writ Petition No. 6200 of 1993 where the validity of such rules have been upheld. It is true that the said judgment was only in relation to Upper Divisional Assistants but the rules are for both, namely, the Upper Division Assistants and the Lower Division Assistants. The said judgment went up in appeal before the Apex Court reported in 1999 (1) SCC 278. This being the position of the vires of the rules having been upheld, in our opinion, the same reasons would apply and bind this bench which is a co-ordinate bench with the aforesaid findings in so far as the validity of the rules are concerned.

149. Sri Prashant Chandra has invited the attention of the Court to para 9 of the judgment of the Apex Court in the Case of Sandhya Educational Society and another v. Union of India and others, 2014 (7) SCC 701, that in our opinion applies squarely on this issue in the present case. Thus, for all the reasons given in our separate judgment delivered today and for the reasons aforesaid we refuse to entertain this amendment at this stage on behalf of the respondent-petitioners.

150. The application is accordingly rejected.

C.M. Application No. 2408 of 2005.

151. This is an application for condoning the delay in the filing of the appeal.

152. We have perused the affidavits filed in support of the delay condonation application as well as the supplementary-affidavit filed in support thereof and the counter as well as the rejoinder filed on the said issue. There is no substantial delay and even otherwise in view of the nature of the litigation and the submissions raised sufficient cause has been made out for condoning the delay.

153. The application is allowed and the delay stands condoned.

154. This impleadment application has been filed by those who claim themselves to have been appointed as Lower Division Assistants and who had also been extended the benefit of regular appointment. They contend that their seniority would stand affected.

155. We have also heard learned counsel on their behalf. This application stands disposed of in terms of Chapter XXII Rule 5-A of the Allahabad High Court Rules.