
(2014) 02 GAU CK 0056
In the Gauhati High Court
Case No : W.P. (C) No. 209 (K) of 2011

T. Wati AO

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision : 06-02-2014

Acts Referred:

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

Citation : (2014) 3 GLD 199 : (2014) 2 GLT 121

Hon'ble Judges : Prasanta Kumar Saikia, J

Bench : Single Bench

Advocate : N. Mozhui, Ms. Irane Vizo, Ms. K. Kire, Mr. L. Likhase Sangtam and Ms. Chubaienla, Advocate for the Appellant; K. Sema, Addl. A.G, Advocate for the Respondent

Judgement

Prasanta Kumar Saikia, J.—This proceeding has been filed with the following prayer:- In the premises aforesaid, it is respectively prayed that Your Lordships would graciously be pleased to admit this petition, call for the records, issue a Rule calling upon the respondents to show cause as to why a writ of Certiorari and/or Mandamus and/or any other appropriate writ, order or direction should not be granted and upon cause or causes being shown be pleased to make the Rule absolute in the following terms:--

A. Quash and set aside:

1. Impugned Letter dated 04.07.2011 (Annexure-24) fixing the seniority of the petitioner from the date of his encadrement to the Department i.e. 24.04.2002
2. Impugned final seniority list dated 26.07.2011 (Annexure-25) of the Directorate of Industries & Commerce in so far it relates to the petitioner and the respondent Nos. 6 to 12
3. Impugned Notification dated 20.08.2011 (Annexure-27) granting officiating promotion to the respondent Nos. 6, 7, 8, 9 and 10.

B. Direct the State respondents to restore the seniority of the petitioner w.e.f. 14.07.1988 in view of the Notification dated 09.09.1994 (Annexure-11) and Letter dated 28.08.2008 (Annexure-20).

And in the interim pending disposal of the Rule be pleased to stay the operation of the Impugned Letter dated 04.07.2011

(Annexure-24); Impugned final seniority list dated 26.07.2011 (Annexure-25) and Impugned Notification dated 20.08.2011 (Annexure-27).

Heard Mr. N. Mozhui, learned counsel for the petitioner. Also heard Mr. K. Serna, learned Additional Advocate General, Nagaland appearing for the State respondents. 2. The facts which have emerged from the writ petition and which are necessary for disposal of the present proceeding, in brief, are that the petitioner was initially appointed as Horticulture Officer under the Department of Agriculture, vide Notification dated 7.1.1981. Subsequently, the Nagaland Plantation Corps Development Corporation Limited, in short, NPCDC Ltd., a Government of Nagaland undertaking, came into being and petitioner was appointed as Assistant Plantation Officer, vide order dated 31.10.1981.

3. While working as above, the petitioner was promoted to the post of the Plantation Manager. Subsequently, by corrigendum dated 14.05.1994, the pay scale of the petitioner as Plantation Officer was upgraded to that of the Deputy Director since the post of Plantation Manager is equivalent to the post of Deputy Director. Meanwhile, the Government of Nagaland had decided to wind up the NPCDC Ltd. and a High Power Committee, (for short, the HPC), was constituted for absorption of the employees of the defunct the NPCDC Ltd. in various other Departments.

4. The HPC deliberated on the issue of absorption of employees of the NPCDC Ltd. and by its Minutes of 2nd Meeting, held on 09.07.1993, the HPC recommended, amongst other things, the absorption of petitioner as the General Manager/Deputy Director in the Directorate of Industries & Commerce by creating a post. On receipt of recommendation of the HPC, the P&AR Department examined the recommendations in the light of other relevant factors.

5. On making a such examination, the P&AR Department found the recommendations acceptable and thereafter, by its noting dated 08.09.1993, the Department submitted its views as under:--

2. As far as seniority is concerned, the staff should be treated as belonging to a Private Organization subsequently absorbed in Government. The normal principle should be 1 year of ante-date for every 3 years of service in NPCDC. By this no employees will be able to get more than 4 years of ante-date.

6. The matter relating to absorption of NPCDC employees were placed before the Cabinet and by Office Memorandum dated 07.04.1994, the Cabinet gave its approval for absorption of employees of erstwhile NPCDC Ltd. under various Departments and thereafter, vide letter dated 09.09.1994, the Government of

Nagaland accorded sanction for creation of one post of Deputy Director/General Manager (Ex-Cadre) in the Department of Industries. By notification dated 09.09.1994, the petitioner was appointed as Deputy Director of Industries.

7. In the said notification, it has been specifically stated that the date of joining of the petitioner in the grade of the Deputy Director shall be counted from 14.07.1988. However, by an Addendum dated 29.09.1994, the word "Ex-Cadre" was added after the word General Manager/Deputy Director, Industries. By virtue of the said Addendum, the service of the petitioner was made an Ex-Cadre.

8. Being aggrieved by the aforesaid Addendum dated 29.09.1994, whereby the post of the petitioner was made Ex-Cadre, the petitioner submitted a representation dated 02.04.1996 praying for encadrement of his post in the Industries department. In that context, it was submitted that all his colleagues in the erstwhile the NPCDC Ltd. were appointed against the posts already in the cadre of the concerned department

9. The matter relating to encadrement of post of the Deputy Director, Industries was placed before the Cabinet and the Cabinet by its Office Memorandum dated 26.04.2002 conveyed its approval for encadrement of Ex-Cadre post of Deputy Director in Industries Department which was already held by the petitioner from 1994. Consequently, vide Notification dated 13.06.2002, the post of the Deputy Director (Ex-cadre) was ordered to been-cadre with effect from 24.04.2002.

10. Still being aggrieved by the encadrement of his post w.e.f. 24.04.2002, the petitioner again submitted a representation dated 18.06.2002 requesting fixation of his seniority as per Notification dated 9.9.1994 (Annexure-II) in the grade of the Deputy Director w.e.f. 14.07.1988. On receipt of representation of the petitioner, the matter relating to fixation of seniority "of the petitioner was placed before the P&AR Department and Department by its noting dated 30.05.2006 submitted its observation as under:--

As a matter of General Principal, seniority should not be depend on whether holding a cadre post or ex-cadre post. A regular employee of the Government seniority is determined by the time he holds a post in a particular grade (Cadre or Ex-Cadre) on regular basis, apart from officiating basis.

11. Thereafter, the Department of Justice and Law by its noting dated 20.09.2006 made an observation that since the petitioner was holding a post in the cadre of the Industries Department in view of notification dated 09.09.1994, (Annexure-11), any disturbance to such Notification would lead to litigation. In view of above remarks, vide Memorandum dated 07.08.2008, the Government conveyed its decision that in view of observation of the Law Department, the earlier Notification dated 09.09.1994 (Annexure-II) was restored.

12. In the meantime, the Government asked the Directorate of Industries to give the petitioner seniority in the grade of the Deputy Director with effect from 14.07.1988. The Director was further asked to give the petitioner the benefit of

policy under which past service experience rendered on adhoc/contingency basis was to be counted at the ratio of 3:1 with a maximum benefit of 4 years vide letter dated 28.08.2008 (Annexure-20).

13. Thereafter, vide Memorandum dated 15.05.2009, a tentative seniority list of the Gazetted Officers in the Department of Industries and Commerce as on 01.05.2009 was published and in the said tentative seniority list, the name of the petitioner was placed at Serial No. 1 whereas the names of respondent No. 6 to respondent No. 12 in the grade of Deputy Director were placed at Serial No. 6 to 12 respectively.

14. Meanwhile, the Nagaland Industries and Commerce Gazetted Officers Association submitted a representation dated 04.05.2012 stating that the seniority of the petitioner in the grade of Deputy Director in the Nagaland Industries and Commerce Department should be counted with effect from 24.04.2002. Basing on representation, so preferred by the Association, aforementioned, the Department of Justice and Law by its noting dated 21.06.2011 observed as follows:--

An officer on ex-cadre cannot be equated with officer in a regular cadre.

15. It may be mentioned here that the same officer of the Justice and Law Department by his earlier observation dated 20.09.2006 commented that though petitioner was holding an ex-cadre post, the service of the petitioner was not an ex-cadre and as such, his seniority in the Department of Industries and Commerce should be counted from 14.07.1988.

16. Thereafter, the Government vide letter dated 04.07.2011, addressed to the Director of Industries and Commerce, stated that seniority of the petitioner in the rank of the Deputy Director in Industries Department was to be counted from the date of the encadrement of his post in such Department, which as stated above, fell on 24.04.2002. The petitioner contends that the Service jurisprudence never allows the State respondents to take such a stand since it runs counter to the conditions, contained in Notification dated 09.09.1994 and letter dated 28.08.2008.

17. In that context, it was pointed out that the Notification dated 09.09.1994 and letter dated 28.08.2008, which have never been withdrawn, have stated differently from the notification dated 04.07.2011 in matter of absorption of the petitioner in Industries Department and therefore, the letter dated 04.07.2011 (Annexure-24) cannot stand as far as the determination of seniority of the petitioner in the grade of the Deputy Director is concerned.

18. In the meantime, final seniority list dated 26.07.2011 was published and in the said list, the name of the petitioner was placed at Serial No. 8 and names of respondent No. 6 to 12 were placed at Serial Nos. 1 to 7 respectively. Being aggrieved, once again, the petitioner filed a representation against such final seniority list dated 26.07.2011. But till date no action has been taken on the

aforesaid representation. Having found no other way out, the petitioner has preferred this writ petition seeking reliefs as aforementioned.

19. The Respondent No. 1,2 and 5 having filed common counter affidavit contested the proceeding. In their common counter-affidavit, they have admitted that the petitioner was originally appointed as Inspector of Industries but he had resigned from the aforesaid post to join the NPCDC Ltd. on 31.10.1988. However, by an order dated 10.04.1991, he was promoted to the post of Plantation Manager with effect from 14.07.1988.

20. Such promotion was made on adhoc basis subject to regularization by the Board of Directors. It has also been pointed out that in the order dated 10.04.1991, it was stated that the promotion of the petitioner would take effect from the date of promotion of one Purakhu Angami as Plantation Manager. Therefore, according to the respondents, the period during which the petitioner held a promotional post on adhoc basis cannot be counted for the purpose of seniority either in the parent department or in the department where he was subsequently absorbed.

21. Since the NPCDC Ltd. under Horticulture Department became defunct, the petitioner along with other employees were required to be accommodated in various Departments and petitioner was accommodated in the Industries Department for which one post of the Deputy Director/General Manager (Ex-Cadre) post was created vide letter dated 09.09.1994. Such post was created to accommodate the petitioner in the Department aforementioned

22. However, he was subsequently appointed as. General Manager/Deputy Director of Industries by Notification dated 09.09.1994. But inadvertently, the word "ex-cadre" was not mentioned in his appointment order dated 09.09.1994 for which an Addendum was issued in order to correct such mistake by inserting the word "Ex-Cadre" vide Addendum dated 29.09.1994.

23. In the meantime, the P & A R Department and Justice and Law Department concluded that petitioner seniority should be fixed with effect from 14.07.1988. However, those Departments were caused to come to the aforesaid conclusion inasmuch as, while they considered the matter relating to fixation of seniority of the petitioner in the Industries Department, the Addendum dated 29.9.1994 was not brought to the notice of those Departments.

24. What is worse, on the basis of above observations, made by the P&AR Department and Justice- and Law Department, which was however not founded on accurate information, the tentative seniority list was wrongly issued by the Government where the petitioner was placed at Serial No. 1 of the seniority list of the Deputy Director/General Manager of the Industries Department.

25. Since such seniority was wrongly published on the basis of erroneous information, the respondent No. 5 by its letter dated 29.07.2011 highlighted such facts and also brought the Cabinet- decision before the notice of the

Government When the matter was again brought to the notice of Justice and Law Department, it made another observation superseding their earlier observation.

26. In their subsequent observations, the Justice and Law Department held as follows:--

An officer on ex-cadre cannot be equated with officer in a regular cadre." vide note dated 21.06.2011 at Annexure-6 to the counter-affidavit.

27. On getting such view from the Justice and Law Department, the Government, vide letter dated 04.07.2011, concluded that the seniority of the petitioner in the rank of the General Manager/Deputy Director should be counted from 24.04.2002, same being the date on which the encadrement of the post aforesaid was made.

28. In paragraph 20 of the counter-affidavit, the respondents have contended that since the petitioner was appointed and confirmed as ex-cadre officer, his service cannot be counted for the purpose of seniority with effect from 14.07.1988. Therefore, his seniority can be counted from that day on which his post was encadre and not a day before. That apart, since such order of encadrement was issued by P&AR Department with the approval of Cabinet, such order become final and binding over one and all.

29. It is also the case of the respondents that final seniority list is still in the stage of proposal for consideration since same has not yet been officially approved by the Government. For the aforesaid reasons, the learned Additional Advocate General, Nagaland has urged this Court to dismiss the present proceeding. In support of his contention, the learned Additional Advocate General, Nagaland has referred me to the following decisions:--

1. Shitla Prasad Shukla Vs. State of U.P. and Others,
2. Ram Janam Singh Vs. State of Uttar Pradesh and another, .
3. Nahar Singh Vs. State of U.P. and Others, .
4. Uttaranchal Forest Rangers" Asson. (Direct Recruit) and Others Vs. State of U.P. and Others, .
5. New Delhi Municipal Council Vs. Pan Singh and Others, .
6. S.S. Balu and Another Vs. State of Kerala and Others, .
7. Neidilhou Angami and Others Vs. State of Nagaland and Others, .
8. Krishnadevi Malchand Kamathia and Others Vs. Bombay Environmental Action Group and Others, .
9. Murari Mohan Ray and Another Vs. State of Assam and Others, .

30. Before we proceed further, we need to know whether the post which was held by the petitioner in the rank of the Deputy Director/General Manager of

Industries is a cadre post or an ex-cadre one. This issue needs to be decided first since both the parties hereto took contradictory stands. On this matter, the petitioner contends that the post, he held, was a cadre post of the Industries Department as is evident from the appointment order dated 09.09.1994.

31. Therefore, by subsequent Addendum, said post cannot be made an ex-cadre one. Since he was holding a cadre post in the Industries Department in the rank of the Deputy Director/General Manager, his seniority in that rank needs to be counted from 14.07.1988 when he was promoted to the post of Plantation Manager in the rank of the Deputy Director/General Manager and not a day later. In support of his contention, the petitioner relied on the observations of the Justice and Law Department at Annexure-18 to the writ petition as well as the statement is made in order dated 10.04.1991.

32. I have considered above submission alongside the documents available in record, more particularly, the order creating the post as well as the Addendum. It is found evident from the letter dated 09.09.1994 that the post in which the petitioner was accommodated in the rank of the General Manager/Deputy Director of Industries Department was an ex-cadre post. The Addendum dated 29.9.1994 further clarifies that said post was an ex-cadre one.

33. Therefore, the appointment letter dated 09.09.1994 whereby the petitioner was appointed as the Deputy Director/General Manager in Industries Department no way makes such post a cadre post in the Department aforesaid, more so, when Addendum dated 29.09.1994 plainly clarifies that the word ex-cadre got dropped inadvertently from the appointment letter dated 09.09.1994. In view of above, I have no difficulty in concluding that the post in which the petitioner was accommodated in the Industries Department in the rank of the Deputy Director/General Manager was an ex-cadre post.

34. The petitioner has, however, contended that even if one assumes for the sake of argument for a moment that he was accommodated in Industries Department in an ex-cadre post, even then, his seniority needs to be counted from 14.07.1988 in the terms of order dated 10.04.1991. In that connection, he had heavily relied on the views of the O.M. Cell (P&AR) vide noting dated 30.05.2006 at Annexure-17 as well as the views of the Justice and Law Department vide its noting dated 20.09.2006 at Annexure-18 to the writ petition.

35. The views of the O.M. Cell (P&AR) are as under:--

As a matter of General Principal, seniority should not be depend on whether holding a cadre post or ex-cadre post. A regular employee of the Government seniority is determined by the time he hold a post in a particular grade (Cadre or Ex-Cadre) on regular basis, apart from officiating basis.

36. On the other hand, the Justice and Law Department had rendered its view on the matter under consideration in the following manner:--

The Notification dated 22.06.2002 (P-77c), treating the post of Deputy Director

as ex-cadre does not speak: of conversion of service of Shri T. Wati Ao, Deputy Director to ex-cadre. In short there is no mention of declaring the service of Shri T. Wati Ao, Deputy Director to be holding ex-cadre post. Any disturbance to the Notification dated 09.09.1994 (P- 79c) would attract litigation.

37. Such a stand, taken by the petitioner, was hotly disputed by the Additional Advocate General, Nagaland contending that the post in question was included in the cadre of the Department of Industries Nagaland with effect from 24.04.2002 only meaning thereby that the petitioner was born in the cadre of the General Manager/Deputy Director in the Department of Industries and Commerce w.e.f. 24.04.2002. As such, he cannot claim seniority during the period when he was not born in the cadre aforementioned.

38. In that connection, my attention has been drawn to the decision of *Uttranchal Forest Rangers (supra)*, wherein it was held that seniority cannot be given on retrospective basis from the date when an employee has not yet been born in the cadre, more particularly, when it would adversely affect direct recruit who has been appointed validly in the meantime.

39. The relevant part is reproduced below:--

This Court has consistently held that 110 retrospective promotion can be granted nor any seniority can be given on retrospective basis from a date when an employee has not even borne in the cadre particularly when this would adversely affect the direct recruits who have been appointed validly in the meantime. In *State of Bihar v. Akhouri Sachindra Nath* this Court observed that:(SCC pp. 342-43, para 12)

12. In the instant case, the promotee Respondents 6 to 23 were not born in that cadre of Assistant Engineer in the Bihar Engineering Services, Class" at the time when Respondents 1 to 5 were directly recruited to the post of Assistant Engineer and as such they cannot be given seniority in the service of Assistant Engineer over Respondents 1 to 5. It is well settled that no person can be promoted, with retrospective effect from a date when he was not born in the cadre so as to adversely affect others. It is well "settled by several decisions of this court that amongst members of the same grade" seniority is reckoned from the date of their initial entry into the service. In other words, seniority inter se amongst the Assistant Engineers in Bihar Engineering Services, Class" will be considered from the date of the length Of service rendered as Asst. Engineers. This being the position in law Respondents 6 to 23 cannot be made senior to Respondents 1 to 5 by the impugned government orders as they entered into the said service by promotion after Respondents 1 to 5 were directly recruited in the quota of direct recruits. The judgment of the High Court quashing the impugned government orders made in Annexures 8,9 and 10 is unexceptional.

In *Vinodanand Yadav v. State of Bihar* on an issue regarding the inter se seniority among the direct recruits and promotees this court applying to the ratio of *State v. Akhouri Sachindra Nath* held that the appellant who were direct recruits shall

be considered senior over the promotes not borne on the cadre when the direct recruits were appointed in service. Hence the gradation list drawn under which promotees were given seniority over direct recruits could not be sustained and was thereby set aside.

40. Similar view has been rendered in the case of Shitala Prasad Shukla (supra). The relevant part is reproduced below:--

10. Those who have been irregularly appointed belong to a different stream, and cannot claim seniority vis-?-vis those who have been regularly and properly appointed, till their appointments became regular or are regularized by the appointing authority as a result of which their stream joins the regular stream. At that point of confluence with the regular stream, from the point of time they join the stream by virtue of the regularization, they can claim seniority vis-?-vis those who join the same stream later. The latecomers to the regular stream cannot steal a march over the early arrivals in the regular queue. On principle the appellants cannot be therefore succeed.

41. The proposition of law so enunciated in Shitala Prasad Shukla (supra) stood affirmed in Ram Janam Singh (supra). The relevant part is reproduced below:--

The date of entry into a particular service was considered to be the most safe rule to follow while determining the inter se seniority between one officer or the other or between one group of officers and the other recruited from the different sources. After referring to different Class " Engineering Officers "Assn. v. State of Maharashtra came to the same conclusion. The same has been reiterated in the case of State of W B v. Aghore Nath Oev. It is now almost settled that seniority of an officer which will be consistent with the requirement of Articles 14 and 16 of the Constitution. Of course, if the circumstances so require a group of persons, can be treated a class separate from the rest for any preferential or beneficial treatment while fixing their seniority. But, whether such group of persons belong to a special call for any special treatment in matters of seniority has to be decided on objective consideration and on taking into account relevant factors which can stand the test of Article 14 and 16 of the Constitution.

42. I have already found that the post against which the petitioner was appointed was not included in the cadre of Industries department till 23.04.2001. He became the part of the cadre in the grade of the General Manager/Deputy Director in the Department of Industries only with effect from 24.04.2002. Being so, he was born in the cadre in question only with effect from 24.04.2002. Therefore, he cannot claim seniority in the grade of the General Manager/Deputy Director in the Department of Industries from a date prior to 24.04.2002.

43. I may note here that the Department of Justice and Law has subsequently rendered its opinion holding that an ex-cadre officer cannot be equated with an officer on regular cadre which appears to be in tune with the law laid down by an authority no less than the Apex Court of the Country. Being so, the subsequent view of the Justice and Law Department has rightly corrected its earlier position

which is already found to be not sustainable.

44. The learned counsel for the petitioner has contended that it is not permissible under the law for the Justice and Law Department to supersede its earlier view. But such a contention is without any substance since there cannot be any Rule/Law preventing the Government or its instrumentalities to correct a mistake committed by it while discharging its official function. If the Government or its instrumentalities are prevented from rectifying its previous mistake, then there would be huge chaos and anarchy.

45. In this connection, one may note here that inter- departmental correspondence, cannot be looked in to by a party stood favored or disfavored by such noting(s). Since those notings come into being at intermediary stages which may not attain finality, no reliance can be placed on such noting. In that regard, we may note what our own High Court has held on such a point in the case of Murari Mohan Ray & Anrus-State of Assam & Ors) (supra). The relevant part is reproduced below:--

I have very carefully gone through the said notings annexed to the additional affidavit filed by the petitioners. On perusal of the same, nothing is discernible that any decision was taken not to accept the recommendation of the APSC in the matter of selection and appointments of the respondent No. 8. Apart from the fact that the matter cannot be decided on the basis of the some internal notings, such notes at the intermediary stages cannot be lifted by the petitioners favouring their case. In the decision making process notes in the file are bound to be given/recorded. But it is the final decision which matters.

46. The proceeding initiated by the petitioner was questioned by the respondents on some other counts as well. First, it has been contended that the order dated 09.09.1994 creating an ex-cadre post in the rank of the Deputy Director in the Industries Department and Addendum dated 29.09.1994 as well as the notification dated 13.06.2002 encadring the post of the petitioner in the Industries department are three basic order(s),

47. According to the respondents those orders subsequently gave rise to various order(s) including the orders/notifications which are impugned in this proceeding. Since those basic orders are not questioned in this proceeding, the petitioner cannot question the consequential orders) which are the subject matter of the present proceeding.

48. In support of such contention learned Additional Advocate General, Nagaland has drawn my attention to the decision Hon"ble Supreme Court in the case of P. Chitharanja Menon and Others Vs. A. Balakrishnan and Others, . In the case of P. Chitraranjana Menon and Ors (supra), Hon"ble Supreme Court held as follows:--

5. We do not see on what basis Ex. P-10 could be challenged. Ex. P-10 refers to Ga MS 93162 dated February 13, 1962. By the Ga of 1962, 16 respondents in the writ petition were promoted as Executive Officers Grade I on the advice on

the Public Service Commission. The promotion of the respondents in the writ petition having been order as early as February 13, 1962, without challenging that order a subsequent order which determined the date of their commencement of service cannot be challenged.

49. Similar view has been rendered in the case of Mukul Saikia and Others Vs. State of Assam and Others, . In the case of Mukul Saikia (supra), Hon''ble Supreme Court held as follows:--

38. Indisputably, the appellants have challenged only the Cabinet Memorandum dated 16.06.2000 in the writ petition before the High Court while the Cabinet decision dated 13.10.2000 was taken on the basis of the said Memorandum and the subsequent notification regularizing the services of the appellants issued by the State Government on 16.11.2000 has remained unchallenged.

39. The Cabinet took the decision dated 13.10.2000 in exercise of the powers under Rule 17 of the Assam Executive Business Rules which was subsequent notified by the State Government on 16.11.2000 as a one-time measure to regularize the services of the private respondents. It appears that the appellants were not serious in regard to challenging the regularization of the private respondents but were only interested in pursuing therein own claim for appointment as CDPOs against the vacancies reserved from direct quota.

50. The above argument was objected to by the learned counsel for the petitioner contending that since some order(s), such as, the order dated 09.09.1994 appointing him in the Department of Industries, the letter dated 28.08.2008 directing that the seniority of the petitioner in the cadre of the Deputy Director in the department above is to be counted from 14.07.1988, the Memorandum 15.09.2009 etc. were all in his favour, he did not have the occasion to fight against those basic orders which are against him.

51. I have found such an argument to be without any substance since the order(s) which were in his favour stood neutralized long back by various orders/ notifications/letters issued in the meantime some of which were impugned in the proceeding at hand. Therefore, unless those basic orders are questioned, the consequential orders/notifications/letters which are impugned in this proceeding cannot be questioned as already held in the case of P. Chitraranjana Menon (supra) as well as in of Mukul Saikia (supra).

52. The learned Additional Advocate General, Nagaland further contends that so long an order, even if it is bad and illegal, continues to occupy the space, earmarked for it, such order cannot be ignored. Such an order would make the way for appropriate order to occupy such space only when such an order is set aside or quashed by an appropriate authority. Thus, even if basic order is bad in law, it will operate with its full vigor till such order are rectified or set aside.

53. In that connection, my attention has been drawn to the decisions, rendered by Hon''ble Supreme Court in the case of Nahar Singh (supra) as well as Krishna

Devi (supra). In Krishna Devi (supra.), it has been held as follows:--

it is a settled legal proposition that even if an order is void, it requires to be so declared by a competent forum and it is not permissible for any person to ignore the same merely because in his opinion the order is void. In *State of Kerala v. M.K. Kunhikannan Nambiar Manjeri Manikoth Naduvil, Tayabbhai M. Bagasarwalla v. Hindu Rubber Industries (P) Ltd. M. Meenakshi V. Metadin Agarwal and Sneh Gupta V. Oevi Sarup* this Court held that whether an order is valid or void, cannot be determined by the parties. For setting aside such an order, even if void, the party has to approach the appropriate forum.

In *State of Punjab v. Gurdev Singh* this Court held that a party aggrieved by the invalidity of an order has to approach the court for relief of declaration that the order against him is inoperative and therefore, not binding upon him. While deciding the said case, this Court placed reliance upon the judgment in *Smith v. East Elloe ROC* wherein Lord Radcliffe observed.

54. Similar view has been rendered in the case of *Nahar Singh* (supra). The relevant part is reproduced below:--

8. In *Halsbury's Laws of England*, 4th Edn. (Re-issue) VII. 1 (1) in para 26 p.31 it is stated, thus:

If an order or decision, or an order or other instrument is invalid, it should, in principle, be null and void for all purposes; and it has been said there are not degrees of nullity. Even though such an act is wrong and lacking in jurisdiction, however, it subsists and remains fully effective unless and until it is set aside by a court of competent jurisdiction. Until its validity is challenged, its legality is preserved.

In the *Judicial Review of Administrative Action*, De Smith, Woolf and Jowell 1995 Edn. at pp 259-60 the law is stated thus:

the erosion of the distinction between jurisdictional errors and non jurisdictional errors has, as we have seen, correspondingly eroded the distinction between void and voidable decisions. The court has become increasingly impatient with the distinction, to the extent that the situation today can be summarized as follows:

(i) All official decisions are presumed to be valid until set aside or otherwise held to be invalid by Court of competent jurisdiction.

55. I have already found that the order dated 09.09.1994 and Addendum dated 29.09.1994 have not yet been questioned in any forum whatsoever. Even the notification dated 13.06.2002 which directed the department that the encadrement of the post in question would be effective from 24.04.2002 has not been questioned till date. Being so, even if those orders are bad in law, it is not open to the petitioner to treat them as such.

56. Admittedly, those orders/notifications/letters were never declared, void and illegal by any Court, whatsoever. Being so, those orders/notifications/letters

would always make the petitioner an excadre officer in the cadre of the Deputy Director/General Manager in the department of Industries till the encadrement of such post in the Department of Industries on 24.04.2002.

57. The petitioner again contends that even if the post he held was included in the cadre of Industries department w.e.f. 24.04.2002, he is required to be given the benefit of seniority of one year for every three years of past service, rendered by him on adhoc/contract basis subject to maximum of 4 years in view of policy, adopted by the Government of Nagaland.

58. Being so, if he is given the benefit of aforesaid policy vis-?-vis his seniority, he would still become senior to private respondent No. 6 to No. 12 in the grade of the General Manager/Deputy Director in the Industries Department. However, such a contention was refuted by the learned Additional Advocate General, Nagaland by referring to the decision rendered by this Court in the case of *Neidilhou Angarni & Ors v. State of Nagaland & Ors.* (supra).

59. In the aforesaid case, this Court held that the Government policy giving one year of ante for every three years of past service, rendered on contract/adhoc basis subject to maximum four years is violative of Article 309 of the Constitution of India and as such, said policy was turned down.

60. The relevant part is reproduced herein below:--

14. Now referring to Issue No. 3, there is no dispute that both the petitioners and the private Respondents belong to the category of direct recruit. It is not the case of the respondent that they have been appointed as against the promotion quota, therefore, the dispute of seniority is between. Amongst the direct recruits. While discussing the issue No. 2 above this Court has already held that in view of the manner and fashion in which the respondents have been regularized, to the post of SO/OSO, they shall be categorised and referred to as irregular appointees. The petitioners being direct regular appointees to the grade of SO-OSO they shall be referred to as regular appointees. This issue of seniority between irregular and regular appointee is no longer res integra in view of the decision rendered by this court in 2008 (1) GLT & ((S8) Nitole & Others. v. State of Nagaland & Ors. Relying on the principle laid down by the Apex Court in *State of U.P. Vs. Rafiquddin and Others*, . In the aforesaid case, this Court relying on the principle laid down in *Rafiquddin* (supra) held that an irregular employee who has been absorbed retrospectively in the cadre contrary to the extent service Rules, cannot be allowed to become senior to persons who are regular appointed earlier. Further I (2006) 10 SCC 346 *Uttaranchal Forest Rangers (Direct Recruit) & Ors. v. State of U.P. & Ors.* The Apex Court held that retrospective seniority cannot be given from a date to an incumbent when the incumbent had not been borne in the cadre and more particularly, when it would affect other also are already borne in the cadre.

16. For the reasons and propositions of, discussed above, the Court is of the opinion that the impugned notifications dated 16.11.2006 (Annexure-E),

19.4.2007 (Annexure-E), and 20.5.2008 (Annexure-E) are liable to be quashed and accordingly the impugned notifications are set aside and quashed as illegal and unsustainable in law.

61. It is an admitted position that Government Policy under which a person rendering past service on contract/adhoc basis were given benefit of past service at the ratio of 3:1 had been declared null and void by this Court since such policy is held to be unsustainable in law. Therefore, the petitioner cannot take any benefit from such policy and as such, his contention of this count too is found unsustainable.

62. Maintainability of the petitioner's case was also questioned on the ground that there was huge delay in seeking the relief in the aforementioned case. In support of such claim, the learned counsel for the respondents has referred me to the decisions of Apex Court of the Country in the case of S.S. Balu and Another (supra) as well as New Delhi Municipal Council (supra). In S.S. Balu(supra) Hon''ble Supreme Court has held as follows:--

17. It is also well-settled principle of law-that "delay defeats equity". The Government order was issued on 15.01.2002. The appellants did not file any writ application questioning the legality and validity thereof Only after the writ petitions filed by others were allowed and the State of Kerala preferred an appeal there against, they impleaded themselves as party-respondents. It is now a trite law that where the writ petitioner approaches the High Court after a long delay, reliefs prayed for may be denied to them on the ground of delay and laches irrespective of the fact that they are similarly situated to the other candidates who obtain the benefit of the judgment. It is, thus, not possible for us to issue any direction to the State of Kerala or the Commission to appoint the appellants at this stage.

63. Similar view has been rendered in the case of New Delhi Municipal Council (supra). Coming back to our case, I have found that the petitioner has approached this Court with huge delay. Such delay, in the facts and circumstances of the case and also of the law laid down by the Apex Court of the Country, comes in the way of granting relief to the petitioner. On this count also, the petitioner case is liable to be dismissed.

64. In view of foregoing discussion, I am of the opinion that the contention of the petitioner that he is senior to the private respondent No. 6 to 12 is found unsustainable in law and as such, none of the relief, which he has claimed in the present proceeding can be granted to him. In the result, the present proceeding is dismissed, same being devoid of merit, of course without any costs.