

HIGH COURT OF ANDHRA PRADESH

* * * *

WRIT PETITION No. 4962 of 2014

Between:

The Government of Andhra Pradesh,
Rep.by its Principal Secretary,
School Education Department Secretariat,
Hyderabad and 3 others

.....PETITIONERS

AND

K. Satyanarayana and 5 others

.....RESPONDENTS

DATE OF JUDGMENT PRONOUNCED: **24.06.2025**

SUBMITTED FOR APPROVAL:

**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BLE SRI JUSTICE CHALLA GUNARANJAN**

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|---|--------|
| 1. Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2. Whether the copies of judgment may be marked to Law Reporters/Journals | Yes/No |
| 3. Whether Your Lordships wish to see the fair copy of the Judgment? | Yes/No |

RAVI NATH TILHARI, J

CHALLA GUNARANJAN, J

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! Counsel for the Petitioners : Sri K. Ramalingeswara Rao
GP for Services-II

Counsel for the Respondents : Sri P. Veerabhadra Reddy

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> Head Note:

? Cases Referred:

1. (2008) 7 SCC 728
2. 2011 SCC OnLine Del 574
3. (2008) 2 SCC (L&S) 586
4. (1998) 5 SCC 246
5. 2025 SCC OnLine AP 1787
6. (2000) 8 SCC 182
7. 2023 SCC OnLine Mad 7726

**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI
&
THE HON'BL SRI JUSTICE CHALLA GUNARANJAN**

WRIT PETITION No. 4962 of 2014

JUDGMENT: (per Hon'ble Sri Justice Ravi Nath Tilhari)

Heard Sri K. Ramalingeswara Rao, learned Government Pleader for Services-II, for the petitioners and Sri P. Veerabhadra Reddy, learned counsel for the respondents.

2. Respondents No.1 to 5 are the applicants in O.A.No.2069 of 2011 before the Andhra Pradesh Administrative Tribunal, Hyderabad (in short 'the Tribunal'). They would be referred to as the 'applicants'. The petitioners herein were the respondents No.1 to 4 in the O.A. and would be referred to as the 'petitioners'.

3. The applicants had applied for the posts of School Assistant under DSC-2001. They were initially appointed to the post of School Assistant as per their merit in the selections. Some of the selected candidates were appointed in January, 2002. Subsequently, the Government issued G.O.Ms.No.76, Education Department, dated 23.09.2002, directing the District Educational Officers (DEOs) to recast the selection list of DSC-2001 as per the judgment of the Tribunal in O.A.No.562 of 2002 and batch dated 22.07.2002. The DEOs had recasted the selection list, called the applicants for counseling in October, 2002 and issued posting Orders in October, 2002 and they joined as School Assistants in the same month, and since then, they had been working in those posts. The applicants could not be appointed along with those selectees who

were appointed and joined in January, 2002 due to mis-interpretation of the provisions of the Presidential Order and finally, pursuant to the Order of the Tribunal in O.A.No.562 of 2002 they were given appointments in October, 2002. The applicants, thus, due to some irregularity in selection, could not be appointed in January, 2002 along with their batch-mates. They made representations to fix up their seniority on par with those who were appointed in January, 2002 as per their merit and ranking in the selection list, but no action was taken and at no point of time, seniority list of Teachers selected in DSC-2001 was communicated to the applicants. Later on, for effecting promotions to the next cadre, the petitioners were taking the date of joining of the applicants in October, 2002 as criteria for fixing up the seniority ignoring their merit and ranking in the selection list of DSC-2001. The applicants filed O.A.No.2069 of 2011. The Tribunal initially passed interim Order, directing the petitioners to dispose of the applicants' representation and also to prepare seniority list in accordance with Rule 33 (b) of the Andhra Pradesh State and Subordinate Service Rules, 1996 (in short 'the Rules 1996'). The petitioners rejected the request of the applicants vide proceedings in Rc.No.164-B5/2011, dated 14.03.2012 based on the instructions of the 3rd petitioner in Rc.No.3741/D1-4/2011, dated 28.12.2011 and by the same proceedings they also communicated the seniority list in Rc.No.164-B5/2011, dated 14.03.2012. The applicants' seniority was fixed as per the date of their joining in October, 2002. The applicants amended the O.A. and also questioned the said seniority list and the Order of rejection.

4. The petitioners filed counter in O.A. and *inter alia* raised the plea that pursuant to the Orders of the Tribunal in O.A.No.562 of 2002 and batch, as per Government Memo No.42005/Services/D/2002-1, GA (Ser-D) Department, dated 28.08.2002 and 18.09.2002, the posting orders were issued to the candidates including the present applicants as per their merit ranking in the selection list under DSC-2001.

5. The petitioners also raised the plea in their counter in O.A. that the issue relating to unification of the service rules issued in G.O.Ms.No.505, dated 16.11.1998 and G.O.Ms.No.538, dated 20.11.1998 was subject matter of SLP (c) No.22597-612/2004 and CA.No.4878/2009 pending before the Hon'ble Supreme Court of India, in which the Order was passed maintaining *status quo* from 20.07.2009. Hence, the claim of the applicants for revival of seniority will only be examined after the receipt of judgment of the Hon'ble Supreme Court.

6. The Tribunal framed the points for determination as under:

“(i) Whether the seniority list vide Rc.No.164-B5/2011, dated 14.03.2012, issued by the 1st respondent is sustainable in law and on facts?

(ii) Whether the applicants are entitled for notional seniority as per their merit and ranking in DSC-2001 selections on par with those who are appointed as School Assistants in January, 2002 with all consequential benefits? And

(iii) to what relief?”

7. The Tribunal allowed the O.A. by Judgment and Order dated 21.03.2013. The seniority list dated 14.03.2012 was set aside and the direction was issued to prepare fresh seniority list by following Rule 33 (b) of the Rules

1996 and to communicate the same to the applicants and other Teachers for their objections, if any, and finalize the same and then effect the promotions to the next cadre. The operative part of the judgment reads as under:

“9. POINT No.(iii): For the reasons stated under Points (i) and (ii), the O.A. is allowed setting aside the seniority list vide Proceedings Rc.No.164-B5/2011, dated 14.03.2012 issued by the 1st respondent. The respondents are directed to prepare fresh seniority list of Teachers selected under DSC-2001 by following Proviso to Rule 33 (b) of A. P. State and Subordinate Service Rules and then communicate the same to the applicants and other Teachers for their objections, if any, receive their objections; finalise the same and then effect promotions to the next cadres. The respondents are directed to give notional seniority to the applicants in the cadre of School Assistants as per their merit and ranking in the selection list from January, 2002 on par with those who are appointed in that month as School assistants under DSC-2001, with all consequential benefits like seniority, increments, etc and the monetary benefit from the date of their actual appointment as School Assistants in October, 2002. Necessary orders in this regard shall be passed within a period of eight weeks from the date of receipt of a copy of this order.”

8. The Tribunal held that the applicants could not be appointed though they were meritorious because of irregular selection made due to mis-interpretation of the Presidential Order. In O.A.No.562 of 2001 and batch the Tribunal allowed the O.A. on 22.07.2002, directing the petitioners to directly fill up the first 20% vacancies as per the merit of the candidates both local and non-local by following reservation. Thereafter, the Government issued G.O.Ms.No.76, dated 23.09.2002, directing the DEOs to redraw the selection list. Accordingly, the selection list was redrawn in which the applicants became eligible for appointment as School Assistants and they were appointed in

October 2002. In preparation of the seniority list, the respondents took the date of joining of the applicants into service in October 2002 as a criteria, ignoring the Rule 33 (b) of the Rules 1996. The Tribunal further held that the applicants though secured higher rank in selections, they became juniors in the cadre of School Assistants as less meritorious candidates were placed above them in the seniority list. To reach its conclusion in favour of the applicants, the Tribunal placed reliance in ***Balwant Singh Narwal v. State of Haryana***¹ and also considered the case of ***Government of NCT of Delhi v. Dr. Pawan Kumar N. Mal***².

9. Learned counsel for the petitioners submitted that the Tribunal failed to appreciate that the unification of service rules issued in G.O.Ms.No.505, dated 16.11.1998 and G.O.Ms.No.538, dated 20.11.1998 were subject matter of contest in the Hon'ble Supreme Court in SLP No.22597-612/2004 and CA No.4878-4901/2009 in which direction was given for maintaining *status quo*. He submitted that in view thereof, the Tribunal acted illegally in allowing O.A. and issuing the directions as contained in its impugned judgment.

10. Learned counsel for the petitioner further submitted that the seniority to the applicants could not be given from any date prior to their date of appointment in October 2002 as they were not born in the cadre before the date of their appointments.

¹ (2008) 7 SCC 728

² 2011 SCC OnLine Del 574

11. Learned counsel for the petitioners further submitted that the respondents after lapse of 10 years, approached the Tribunal and as such, the O.A. deserved to be dismissed on the ground of delay and laches.

12. Learned counsel for the petitioners further submitted that the directions as given by the Tribunal would adversely affect the rights of those persons who were unrepresented and not party before the Tribunal.

13. Learned counsel for the claimants supported the Order of the Tribunal. He submitted that the applicants were selected in same selection DSC-2001, but it was due to the irregularities in such selection that the applicants though meritorious and should have been given appointment initially, were not selected and appointed and it was only after the Order passed by the Tribunal in O.A.No.2069 of 2011 and the Government Order to recast the selection list and as per the recast selection list, the applicants being meritorious had been given appointment. But in the meantime, some time was taken in the litigation and because of that the applicants could not be made to suffer. The applicants being the selectees of the same DSC-2001 and being meritorious, under the circumstances could not be denied their seniority or the placement at the appropriate place at par with the other selectees of DSC-2001, selected along with the applicants. He submitted that there is no illegality in the Order of the Tribunal which has the support of law in the cases of ***Balwant Singh Narwal*** (supra) and ***Dr. Pawan Kumar N. Mali*** (supra).

14. Learned counsel for the applicants further submitted that the contention with respect to the interim order passed by the Hon'ble Apex Court

in the SLP.No.22597-612/2004 and CA No.4878-4901/2009 has nothing to do with the selection of DSC-2001. He submitted that the Tribunal considered the said aspect and clearly held that the said litigation has nothing to do with the seniority being claimed by the applicants of DSC-2001. He has further refuted the other submissions relating to delay and laches in approaching the Tribunal as also of adversely affecting the allegedly unrepresented parties, as without any substance.

15. We have considered the aforesaid submissions and perused the material on record.

16. The point that arises for our consideration is,

“Whether the impugned judgment of the Tribunal is legal or it calls for interference.?”

17. Firstly, so far as the contention of the petitioners’ counsel with respect to the Order of *Status quo* by the Hon’ble Apex Court in the SLP No.22597-612/2004 and CA No.4878-4901/2009 is concerned, on our specific query, learned counsel for the petitioners submitted that the said matter pertained to DSC-1998 and on the subject of unification of service rules in G.O.Ms.No.505, dated 16.11.1998 and G.O.Ms.No.538, dated 20.11.1998. The Tribunal in para-8 (f) observed that “...*the said litigation has nothing to do with the seniority now claimed by the applicants...*”. The seniority in the present case, is admittedly to be considered as per Rule 33 (b) of the Rules 1996, which learned counsel for the petitioners submitted during arguments to be different from G.O.Ms.No.505, dated 16.11.1998 and G.O.Ms.No.538, dated 20.11.1998.

Learned counsel for the petitioners could not demonstrate as to how the present matter was connected or covered by the SLP No.22597-612/2004 and CA No.4878-4901/2009.

18. Besides, CA.No.4886-4901 of 2009 was dismissed by the Hon'ble Apex Court on 30.09.2015 with observations and directions, which Order reads as under:

“The application for amendment of cause-title and the application for impleadment are allowed as prayed for.

Heard learned counsel for the rival parties.

We see no reason to interfere with the well-considered decision in exercise of our jurisdiction under Article 136 of the Constitution of India. While dismissing the appeals and the special leave petition, we deem it appropriate to make the following observations/directions.

Since the recruitment to the local authorities, the Panchayat Samitis and the Zilla Parishads are said to have been done in compliance with para 8 of the Presidential Order, the State Government is at liberty to send a proposal to the Union of India obtaining the approval of the President of India to integrate the teachers of the Panchayat Samitis and the Zilla Parishads, who are also government servants with the existing local cadres of teachers. As and when such proposal is sent to the Union of India, the same shall be considered at any early date.

In the meantime, it would be open to the State Government to frame Rules to make suitable promotional avenues for teachers and other employees of the Panchayat Samitis and the Zilla Parishads.”

19. It could not be argued by the learned counsel for the petitioners that the judgment of the Tribunal cannot stand in view of the directions and observations made in CA Nos.4878-4885 of 2009 by the Hon'ble Apex Court.

20. Consequently, we find no force in the aforesaid submissions of the petitioners' counsel to challenge the judgment of the Tribunal.

21. So far as the submission of the petitioners' counsel that the O.A. was filed belatedly which suffered from delay and laches is concerned, firstly, any such plea on the point of laches appears not to have been taken before the Tribunal. The only plea which was taken as per para-9 of the counter affidavit filed in the O.A., was that the applicants submitted the representation after a lapse of 7 years. Additionally, and besides that, the seniority list was prepared on 14.03.2012 and the petitioners' representations were rejected on consideration pursuant to the interim order of the Tribunal in the same O.A.No.2069 of 2011, on 14.03.2012 during the pendency of the O.A. So, by amendment the Order of rejection and the seniority list were also challenged. Consequently, on this aspect, we are of the view that there is no question of any delay or laches in challenging the seniority list or order of the rejection of the petitioners' claim for seniority. Further, it is not the case of the petitioners that any seniority list had been prepared prior to 14.03.2012. Whereas, the case of the applicants was that at the time of making promotion to the next cadre post they represented to prepare seniority list and then to effect the promotions. Being aggrieved from such action of the petitioners, as stated in the O.A., the applicants approached the Tribunal for direction as prayed in the O.A. at a time when they felt aggrieved from the action of the petitioners in proceeding for promotion without preparing seniority list. We are of the view

that the submission of the petitioners' counsel that the O.A. suffered from laches and delay holds no ground. Such submission is rejected.

22. Now coming to the merit of the Order of the Tribunal, we are of the view that the applicants are the selectees of the same selection DSC-2001. Initially, they were denied selection and appointment, for the reason that the selection was erroneous by not applying correctly the Presidential Order with respect to locals and non-locals, and when the exercise was done correctly, again, pursuant to the Order of the Tribunal in O.A.No.562 of 2002, dated 22.07.2002, the applicants got selected and appointed in October 2002, whereas some of the selectees of the same selection had already been given appointment in January, 2002. The applicants were entitled for being placed in the seniority list, as per their merit, at par with the other selectees in the same selection who were given appointments in January 2002. Rule 33 (b) of the Rules 1996 which is reproduced hereinafter, also provides for the same and has been correctly considered by the Tribunal and O.A. allowed as per the law and in the cases of **Balwant Singh Narwal** (supra) and **Dr. Pawan Kumar N. Mali** (supra).

23. Rule 33 (b) of the Andhra Pradesh State and Subordinate Service Rules, 1996 relevant for the present case reads as under:

“33. SENIORITY:

(b) The appointing authority may, at the time of passing an order appointing two or more persons simultaneously to a service, fix either for the purpose of satisfying the rule of reservation of appointments or for any other reason the order of preference among them, and where such order has been fixed, seniority shall be determined in accordance with it.

Provided further that the order of merit or order of preference indicated in a list of selected candidates prepared by the Public Service Commission or other selecting authority, shall not be disturbed inter-se with reference to the candidates position in such list or panel while determining the seniority in accordance with this rule and notional dates of commencement of probation to the extent necessary, shall be assigned to the persons concerned, with reference to the order of merit or order of preference assigned to them in the said list.”

24. Rule 33 (b) of the Service Rules 1996 thus provides that the appointing authority may at any time of passing an order appointing two or more persons simultaneously to a service, fix either for the purpose of satisfying the rule of reservation of appointments or for any other reason the order of preference among them, and where such order has been fixed, seniority shall be determined in accordance with it. Its proviso provided that the order of merit or order of preference indicated in a list of selected candidates prepared by the Public Service Commission or other selecting authority, shall not be disturbed *inter se* with reference to the candidates position in such list or panel while determining the seniority in accordance with this rule and notional dates of commencement of probation to the extent necessary shall be assigned to the persons concerned with reference to the order of merit or order of preference assigned to them in the said list.

25. Therefore, as per Rule 33 (b) of the Service Rules 1996, the respondents/applicants were entitled to be given the seniority in the order of merit or preference as per the merit list of appointees, all being selectees of the same DSC-2001, irrespective of the date of the applicants' appointment i.e., though given appointment in October 2002, for no fault on their part, but

because of irregularity committed in selection which was corrected under the Order of the Tribunal. They were entitled for the seniority being given with effect from January, 2002, at par their counter parts.

26. In ***Balwant Singh Narwal v. State of Haryana***³ the Haryana Public Service Commission, the third respondent therein (in short “the Commission”) issued an advertisement in January 1992 inviting applications for 18 posts of temporary Principals in higher secondary schools. The advertisement made it clear that the number of posts advertised was subject to variations to any extent. On 01.06.1993, the State Education Department made a fresh requisition to the Commission in regard to additional vacancies, thereby increasing the posts to be filled to 37. The respondents 4 to 16 therein were applicants against the said advertisement and underwent the process of selection. The Commission declared the merit list of 30 selected candidates on 30.09.1993, published on 01.10.1993, which included respondents 4 to 16. However, before the State Government could make appointment in terms of the said list, a non-selected candidate filed WP No. 12700 of 1993 contending that only 18 posts were notified and the Commission could not make recommendations for selection of 30 candidates. The writ petition was allowed by the High Court on 04.04.1994 and the recommendations in excess of the 18 vacancies were quashed on the ground that the Commission could not make recommendations beyond the number of posts advertised. The appeal was dismissed by the Division Bench of the High Court. In the meanwhile, in view

³ (2008) 2 SCC (L&S) 586

of the Orders of the learned Single Judge, the State Government appointed only 16 candidates from the list of 30, by Order dated 02.06.1994, as against 18 permitted by the High Court, not for want of vacancies but on account of some technical difficulty in appointing other two candidates. The respondents 4 to 16 were denied appointments, though their names were in the selected merit list of 30 candidates. The Order of the Division Bench of the High Court was challenged before the Hon'ble Apex Court, which was disposed of, reversing the decision of the High Court and dismissing the writ petition, also holding that the recommendations made by the Commission were in accordance with law, and therefore, all the 30 names recommended by the Commission were entitled to be appointed. Pursuant thereto, the State Government by Order dated 26.05.2000 appointed respondents 4 to 16 as Principals. They also requested for fixing their seniority with reference to the merit list vide various representations that they should be given seniority above those who were appointed against subsequent vacancies. The State Government considered and accepted their request and fixed their position immediately after the 16 candidates who were appointed from the same merit list on 02.06.1994, and they were shown above the appellants before the Hon'ble Apex Court in the provisional seniority list of Principals HES-II. These appellants before the Hon'ble Apex Court were the Principals appointed in the meantime pursuant to subsequent selection for subsequent vacancies.

27. The Hon'ble Apex Court in ***Balwant Singh Narwal*** (supra) observed that the general proposition that selection by the Public Service

Commission is merely recommendatory and does not imply automatic appointment and that the appointing authorities should not give notional seniority without valid reason, from a retrospective date, which would affect the seniority of those who have already entered service, was not in dispute. Further, the Hon'ble Apex Court observed on the question in regard to seniority of the respondents 4 to 16 selected on 01.10.1993 against certain vacancies of 1992-1993 who were not appointed due to litigation, and those who were selected against subsequent vacancies, that a similar situation, arose in ***Surendra Narain Singh v. State of Bihar***⁴ in which it was held that the candidates who were selected against earlier vacancies but who could not be appointed along with others of the same batch due to certain technical difficulties, when appointed subsequently, would have to be placed above those who were appointed against subsequent vacancies.

28. Paragraph-9 of ***Balwant Singh Narwal*** (supra) reads as under:

“9. There is no dispute about these general principles. But the question here is in regard to seniority of Respondents 4 to 16 selected on 1-10-1993 against certain vacancies of 1992-1993 who were not appointed due to litigation, and those who were selected against subsequent vacancies. All others from the same merit list declared on 1-10-1993 were appointed on 2-6-1994. Considering a similar situation, this Court, in ***Surendra Narain Singh v. State of Bihar*** [(1998) 5 SCC 246 : 1998 SCC (L&S) 1317] held that candidates who were selected against earlier vacancies but who could not be appointed along with others of the same batch due to certain technical difficulties, when appointed subsequently, will have to be placed above those who were appointed against subsequent vacancies.”

⁴ (1998) 5 SCC 246

29. Consequently, following the judgment in ***Surendra Narain Singh*** (supra), the Hon'ble Apex Court in ***Balwant Singh Narwal*** (supra), justified the action of the State Government in giving notional seniority and placing the respondents 4 to 16 therein immediately below the other 16 candidates who were selected in the common merit list and appointed on 02.06.1994. The retrospective seniority was also given to them from 02.06.1994 when the other selected candidates in the same merit list were appointed, observing that those should not be denied the benefit of seniority.

30. Recently, the aforesaid aspect of notional seniority along with selectees/appointees of the same selection was considered by a coordinate Bench of this Court in ***Government of Andhra Pradesh v. Dendukuri Venkata Narasimha Raju***⁵. In the said case, the applicants therein claimed for grant of seniority and also the other benefits at par with the appointees of DSC-1989 who were selected and given appointments in the year 1996. The Tribunal had allowed their claim. The State had filed the writ petition. Those applicants were also the selectees of DSC-1989. They were meritorious and their names were in the merit list, but the persons less meritorious were given appointments. Litigation started and ended in favour of the applicants. Finally, the applicants were given appointments being selectees in DSC-1989 in the year 2002 after terminating the services of less meritorious candidates. The Coordinate Bench of this Court observed and held that those applicants being selectees of the same DSC-1989 who could not be appointed along with the

⁵ 2025 SCC OnLine AP 1787

other selectees who were given appointments in the year 1996, though meritorious, but due to litigation, when those applicants were appointed subsequently in the year 2002 will have to be placed along with the appointees of 1996 i.e., the selectees of the same selection of DSC-1989, following the law as laid down in ***Surendra Narain Singh*** (supra), ***Balwant Singh Narwal*** (supra).

31. It is apt to refer paragraphs-34 to 43 of ***Dendukuri Venkata Narasimha Raju*** (supra) as under:

“34. We shall also refer to *Pawan Pratap Singh v. Reevan Singh*⁵ in which the question was of determination of seniority between two groups of direct recruits to the posts of Deputy Jailor (Group ‘C’ post), one appointed in 1991 through the selection made by the Uttar Pradesh Subordinate Services Selection (in short ‘the Selection Commission’) and the other in 1994 by the Uttar Pradesh Public Service Commission (in short ‘UPPSC’). The Uttar Pradesh Government Servants Seniority Rules, 1991 (in short ‘1991 Rules’) were made applicable to all government servants of Uttar Pradesh. Rule 5 of 1991 Rules provided for seniority where appointments were made by direct recruitment only and Rule 8 of 1991 Rules provided for determination of seniority where appointments were made by promotion and direct recruitment. Other Rules, namely, the Uttar Pradesh Jail Executive Subordinate (Non-Gazetted) Service Rules, 1980 (in short ‘1980 Rules’), under which the procedure for direct recruitment to the post of Deputy Jailor and Assistant Jailor was provided. The recruitment to the post of Deputy Jailor was by two sources, by direct recruitment and by promotion. The High Court therein had applied Rule 5 of 1991 Rules for determination of seniority, as the question was relating to the determination of seniority between two groups of direct recruits to the post of Deputy Jailor. It was held that since the appointments were to be made to the post of Deputy Jailor by promotion and also by direct recruitment, Rule 5 was

not applicable, but Rule 8 would apply even if it was a case of determination of seniority between two groups of direct recruits to the Deputy Jailor.

35. In *Pawan Pratap Singh* (supra) the issue was not concerned with the seniority *inter se* of persons appointed on the result of one selection through direct recruitment or through direct recruitment and promotion in one selection. The issue was between the direct recruits of different selections, one appointed in 1991 and the other appointed in 1994. Hon'ble **Justice R. M. Lodha** in his judgment held that Rule 8 (1) in unambiguous terms provided that the seniority of persons, subject to the provisions of sub-rules (2) and (3), for determination would be from the date of the order of their substantive appointments. Sub-rules (2) and (3) were not attracted. Sub-Rule (2) provided that the seniority *inter se* of the persons appointed on the result of one selection, (a) through direct recruitment, shall be the same as it is shown in the merit list prepared by the Commission or its Committee, as the case may be, whereas sub-rule (3) provided that where appointments were made both by promotion and direct recruitment on the result of any one selection the seniority of promotes vis-à-vis direct recruits shall be determined in a cyclic order (the first being a promote) so far as may be, in accordance with the quota prescribed for the two sources. Rule 8 (1) was held applicable to determine the seniority from the date of the order of a substantive appointment. The Hon'ble Apex Court (per Hon'ble **Justice R. M. Lodha**) held that what was relevant was the date of the order of their substantive appointment and since the substantive appointment of the 1991 appointees was much prior in point of time, they must rank senior to the 1994 appointees. The Hon'ble Apex Court further observed that the appointees of 1991, who were selected and appointed in accordance with the service rules could not be made juniors to the 1994 appointees, even if it was assumed that the selection and appointment of the 1994 appointees was for earlier vacancies. The Hon'ble Apex Court did not accept the contention raised therein that the seniority shall be determined with respect to the earlier vacancies. In the said case, the appointees of 1994 were selected against earlier vacancies, but in the meantime, the selection for the subsequent vacancies took place, in which the appointees of 1991 were appointed. The Hon'ble Apex

Court held that no retrospective promotion could be granted nor any seniority be given on retrospective basis from a date when an employee had not even been borne in the cadre, as by doing so, it must adversely affect the employees who had been appointed validly in the meantime.

36. In *Pawan Pratap Singh* (supra), in the concurring judgment, Hon'ble **Justice Aftab Alam**, summarized the legal position with regard to the determination of seniority in service in paragraph-45, which reads as under:

“45. From the above, the legal position with regard to determination of seniority in service can be summarised as follows:

- (i) The effective date of selection has to be understood in the context of the service rules under which the appointment is made. It may mean the date on which the process of selection starts with the issuance of advertisement or the factum of preparation of the select list, as the case may be.
- (ii) Inter se seniority in a particular service has to be determined as per the service rules. The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from different sources. Any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.
- (iii) Ordinarily, notional seniority may not be granted from the backdate and if it is done, it must be based on objective considerations and on a valid classification and must be traceable to the statutory rules.
- (iv) The seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant service rules. It is so because seniority cannot be given on retrospective basis when an employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime.”

37. In the concurring judgment, **Justice Aftab Alam** in para-61 also observed that in case the seniority between the appellants and the first respondent therein was to be determined outside the 1991 Rules, one has to go

to the basic principles for determination of seniority, and one cardinal principle for determination of seniority was that unless provided for in the rules, seniority could not relate back to a period to the date of the incumbent's birth in the service/cadre. It was also observed, in the concurring judgment, that Rule 8 of 1991 Rules was also not applicable to the facts of that case and the issue of seniority was to be decided on the basis of the basic principles and that there was no need of attracting Rule 8 of 1991 Rules. Those basic principles were, firstly, as already mentioned that, seniority cannot relate back to the period prior to the date of birth in that cadre and the other that the direct recruits cannot claim appointment from the date of vacancy, before their selection referring to the judgments in *Suraj Parkash Gupta v. State of J&K*⁶, *N.K. Chauhan v. State of Gujarat*⁷, *A. Janardhana v. Union of India*⁸ and *A. N. Pathak v. Secy. to the Govt.*⁹. So, in *Pawan Pratap Singh* (supra) the ratio laid down is the same, may be referring to Rule 8 of the Service Rules, 1991, or on the general principles, independent of the applicability of Rule 8.

38. From the aforesaid judgments, the legal position, is that the *inter se* seniority in a particular service has to be determined as per the Service Rules. The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority *inter se* between one officer or the other or between one group of officers and the other recruited from different sources. Any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution of India. Ordinarily, notional seniority may not be granted from the backdate and if it is done, it must be based on objective considerations and on a valid classification and must be traceable to the statutory rules.

39. We shall now refer to *K. Meghachandra Singh v. Ningam Siro*¹⁰ in which the question was of the seniority between promotees and the direct recruits in the Manipur Police Service Grade II Officers Cadre and the promotes who were serving as Inspector of Police, who were granted promotion on the basis of duly constituted Departmental Promotion Committee (DPC) to MPS Grade II Cadre on 01.03.2007. The direct recruits were directly recruited vide the Orders dated 14.08.2007 and 24.11.2007. The appointment and the seniority

was governed by the Manipur Police Service Rule 1965. The contention of the promotees was that they entered the MPS Grade II Cadre on 01.03.2007, whereas the direct recruits were appointed subsequently and therefore the promotee should be regarded as senior to the direct recruits. The contention of the direct recruits was that the seniority had to be decided in accordance with the year of the vacancy and not by the fortuitous date on which the appointment could be finalized for the direct recruits. The High Court found that the promotees got entered into the cadre in the recruitment 2006-2007, whereas the direct recruits would stand appointed in the recruitment year 2007-2008, and therefore, there was no overlap between the promotees and direct recruits as far as the year of recruitment was concerned. So the principle of rotation quota between the two streams would not arise under Rule 28 (iii). Accordingly, the High Court determined that the promotees would rank seniors to the direct recruits. The Division Bench upheld the conclusion of the learned single Judge and confirmed the Order, but also held that the seniority for direct recruits could not be reckoned from a date prior to their appointment. The Hon'ble Apex Court upheld the judgment of the High Court. It was held that the seniority could not be given to the employee who was yet to be borne in the cadre. The seniority is to be reckoned not from the date when vacancy arose but from the date on which the appointment was made to the post. The Hon'ble Apex Court approved the judgments in the cases of *Jagdish Ch. Patnaik v. State of Orissa*¹¹, *Suraj Parkash Gupta* (supra), and overruled *Union of India v. N. R. Parmar*¹² with the caveat that the judgment in *K. Meghachandra Singh* (supra) will not affect the *inter se* seniority already determined, based on *N.R. Parmar* (supra) and the same was protected. The judgment in *K. Meghachandra Singh* (supra) was held to be applied prospectively, except where seniority was to be fixed under the relevant rules from the date of vacancy/the date of advertisement. If the relevant rules provided for determination of seniority from the date of vacancy or date of advertisement, the seniority would be determined as per that rule, but otherwise the seniority could not be determined from the date of vacancy or the date of notification.

40. We are not oblivious that in *Hariharan v. Harsh Vardhan Singh Rao*¹³ the judgment in *K. Meghachandra Singh* (supra) has been referred to the Larger Bench on the following points:

“38. Hence, we pass the following order:

- i. We are of the considered view that the following questions need to be decided by a larger Bench of five Hon'ble Judges:
 - a. Whether the decision in the case of *K. Meghachandra*² can be said to be a binding precedent in the light of the law laid down by the Constitution Bench in the case of *Mervyn Coutindo*³ and the law laid down by a Coordinate Bench in the case of *M. Subba Reddy*⁶?
 - b. In absence of specific statutory rules to the contrary, when the ‘rotation of quota’ rule is applicable, whether the seniority of direct recruits who were recruited in the recruitment process which commenced in the relevant recruitment year but ended thereafter, can be fixed by following ‘rotation of quota’ by interspacing them with the direct recruits of the same recruitment year who were promoted earlier during the same year?
- ii. We direct the Registry to place this petition before Hon'ble the Chief Justice of India for appropriate orders.
- iii. The interim relief granted on 13th July 2018 stands vacated. Effect shall be given to the impugned judgment subject to the final outcome of this appeal or reference, as the case may be. We also clarify that the seniority of promotees and direct recruits who may be appointed hereafter will be subject to the final outcome of the decision of this appeal or the decision in reference, as the case may be. Accordingly, concerned persons shall be informed in writing by the Income Tax Department.”

41. The present is a case of the applicants for grant of seniority and also the other benefits at par with the appointees of DSC 1989, who were selected and given appointment in the year 1996. The respondents 1 to 11 herein (the applicants) are also the selectees of DSC 1989. They were meritorious and their names were in the merit list, but the persons less meritorious were given the appointment. Litigation started and ended in their favour. Finally these applicants were given the appointment being selectees of DSC 1989 pursuant to

the orders of the High Court, in the year 2002 in regular pay scale, after terminating the services of those less meritorious candidates. So, the present is not a case of determination of seniority neither between the direct recruits on one hand and the promotees on the other hand, nor a case of determination of seniority between the groups of two direct recruits of different selections in different years or of different year vacancies. Present is a case of determination of seniority amongst the selectees and the appointees of the same selection of DSC 1989.

42. The date of appointment of the applicants is in the year 2002, but the question is whether their entry in the service is to be considered only from the date they have been given actual appointment or they are to be considered as having been borne, may be on notional basis on the date the appointments were given to the selectees of the same selection, in the year 1996, and these applicants were denied the appointment on erroneous ground, though they were meritorious and must have been appointed in the year 1996 itself. After many round of litigation, as has been mentioned in the writ petition and also in the O.A. of which reference has been made by the Tribunal on which there is no dispute, if the appointment had been made as per law, these meritorious candidates/applicants could not be denied the appointment, along with their counter parts/the selectees of DSC 1989. Consequently, we are of the view that to the facts of the present case, the law as laid down by the Hon'ble Apex Court in the case of *Balwant Singh Narwal* (supra) and the judgment in *Surendra Narain Singh* (supra) is fully applicable on which the Tribunal placed reliance, in which the Hon'ble Apex Court observed and held that the candidates who were selected against earlier vacancies but who could not be appointed along with others of the same batch due to certain technical difficulties, when appointed subsequently, will have to be placed above those who were appointed against subsequent vacancies.

43. Consequently, we are of the view that following the law, as laid down in *Surendra Narain Singh* (supra) and *Balwant Singh Narwal* (supra), the respondents 1 to 11 being the selectees of the same DSC 1989, who could not be appointed along with other selectees who were given appointment in the year

1996, and these persons could not be given due to no fault on their part and due to the litigation, when appointed subsequently in the year 2002 will have to be placed, along with the appointees of 1996 i.e., the selectees of the same selection of DSC 1989 and so the applicants would also be entitled for the benefits at par with the appointees of 1996, which has been rightly awarded by the Tribunal.”

32. In ***Sanjay Dhar v. J&K Public Service Commission***⁶ the main question was whether the certificate of practice furnished by the appellant therein, satisfied the requirement of Rule 9 of J&K Civil Service (Judicial) Recruitment Rules, 1967 and if so, whether the said appellant was wrongfully denied the appointment in 1992-93 selections. The Hon’ble Apex Court held that the appellant satisfied the requirement of Rule 9 of the aforesaid Rules and J&K PSC was not justified in rejecting his application holding him to be ineligible. The said appellant was also successful having secured third position in the select list, so he could not have been denied appointment. He was fully entitled to the relief of his appointment with effect from the date from which the candidates finding their place in the order of appointments issued pursuant to the select list prepared by the J&K PSC in the same selection. The Hon’ble Apex Court also held that the appellant deserved to be assigned notionally a place in seniority consistently with the Order of merit assigned by the J&K PSC. It was directed that the said appellant shall be deemed to have been appointed along with other appointees and assigned a place of seniority consistently with his placement in the order of merit in the select list.

⁶ (2000) 8 SCC 182

33. In ***C. Ovuraj v. Director General of Police***⁷ where the petitioners therein were erroneously declared as unfit during the first medical examination, but during the second medical examination, they were declared to be fit and since training had already been commenced, the said petitioners had to wait till 2015 for issuance of appointment order. The delay in issuance of the appointment orders to those writ petitioners was attributable only to the department and there was no fault on the part of the petitioners. Those petitioners had filed the petition for fixation of their seniority along with their batch-mates from the year 2012, as their representation to that effect was rejected by the concerned department. The Madras High Court set aside the Order of rejection and directed to notionally fix the seniority to those writ petitioners from the date on which the candidates lower in merit to the petitioners were appointed in the year 2012, and also directed that they would be entitled for notional benefits of such continuous appointment, with further direction that the period between 2012 and the date of appointment order of those petitioners shall be taken into consideration for the purpose of seniority and pensionary benefits.

34. In ***Dr. Pawan Kumar N. Mali*** (supra), the respondents therein were eligible for the appointment to the post of Medical Officer (Ayurveda) from the date three other persons were selected along with them and were appointed, and they filed the petition before the Tribunal for counting that period for increments and fixation of pay taking that period into consideration,

⁷ 2023 SCC OnLine Mad 7726

as also for seniority. The Tribunal had allowed the petition. The writ petition filed by the Government of NCT of Delhi, challenging the Order of the Tribunal was dismissed. The Delhi High Court placing reliance in the case of ***Surendra Narain Singh*** (supra) held that when the appointment is delayed, the candidates could not be allowed to suffer for no fault of theirs and their seniority would be protected. The respondents in the said case since were selected with three other Doctors who were appointed, but the respondents could not be appointed on account of interim order granted in respect of the services of the doctors who were appointed on contract basis, held that the respondents on their appointment would be entitled for seniority from the date they had accepted the offer of appointment along with three other doctors who were already appointed.

35. We are of the view that to the facts of the present case, the law as laid down by the Hon'ble Apex Court in the case of ***Balwant Singh Narwal*** (supra) and the judgment in ***Surendra Narain Singh*** (supra) is fully applicable on which the Tribunal placed reliance

36. The aforesaid judgments in ***Sanjay Dhar*** (supra), ***C. Ovuraj*** (supra) and ***Dr. Pawan Kumar N. Mali*** (supra), upon which reliance has been placed by the learned counsel for the respondents, also support their contentions and the view taken by the Tribunal.

37. The submission of the petitioners' counsel that the applicants cannot be given the seniority from any date prior to their date of appointment in 2002, as by that time they were not born in the cadre is misconceived, for the reasons

and considerations made hereinabove. The contention to that effect was also raised in ***Dendukuri Venkata Narasimha Raju*** (supra), where the Coordinate Bench observed and held as under in para-47.

“47. We are of the view that it cannot be said that the applicants/respondents 1 to 11 were borne on the date when the appointment was given to them and giving them the benefit at par with the appointees of 1996, notionally would amount to giving them the seniority from the date they were not borne in the cadre. It cannot be so said, for the reason is that, if they had been given appointment as per their entitlement of being selected in the same selection of DSC 1989 at par their counter parts, they would have borne in the cadre in the year 1996. They were not given appointments along with other selectees in the year 1996. They should not suffer for the fault of the State and its authorities in not appointing them though were selected but not appointed and the persons with less merit were given appointment. **Consequently, we are of the further view that by giving the notional seniority and the other benefits from 1996 at par with the other appointees of the same selection, the respondents shall be treated as having borne in the cadre of the year 1996 itself notionally. So, it is not the case that they are being given notional seniority or notional benefits from a date prior to their birth in the cadre. But it is a case of giving them parity and their right to which they are legally entitled in view of their selection, but denial of appointment illegally in the year 1996 though selected in the same selection of DSC-1989.”**

38. So far as the further contention of the petitioners’ counsel that the implementation of the direction of the Tribunal would adversely affect the unrepresented parties is concerned, the same is also misconceived. The reason is that the Tribunal has taken care of that aspect and has directed the petitioners to intimate the provisional seniority list to all the concerned and receive the objections, if any, and then finalize the seniority list, which is in

consonance with the principles of natural justice, as also the principles for finalizing the seniority list.

39. Thus considered, we find no merit in the writ petition. The Order of the Tribunal does not suffer from any illegality.

40. The Writ Petition is dismissed. The petitioners shall comply with the Order of the Tribunal, if not implemented so far, expeditiously. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed in consequence.

RAVI NATH TILHARI, J

CHALLA GUNARANJAN, J

Date: 24.06.2025
Dsr

Note:
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