



2026:CGHC:4252-DB

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPS No. 1692 of 2020

The date when the judgment is reserved	The date when the judgment is pronounced	The date when the judgment is uploaded on the website	
		Operative	Full
26.11.2025	23.01.2026	--	23.01.2026

- 1** - Surendra Kumar Kaushik S/o Ganesh Ram Kaushik, Aged About 43 Years Working As Sr Pws, R/o Qtr No. 270/1, Ne Railway Colony, Manendragarh, Korea Chhattisgarh 497442- Applicant No. 1 In OA No.203/00432/2016
- 2** - Krishna Kumar S/o Tarkeshwar Prasad, Aged About 37 Years Working As Sr Pws, R/o Qtr. No. 24/1, Railway Colony, Chirmiri Chhattisgarh 497451- Applicant No. 2 In OA No.2-3/00432/2016
- 3** - Rajkishore Choudhary S/o Shri Gandhi Choudhary Aged About 43 Years R/o Railway Qr. No. 45, Chandiya Road, District Umaria (Madhya Pradesh) 484660- Applicant In OA No.203/00568/2016
- 4** - Devnandan Patel S/o Shri Nilambar Patel, Aged About 43 Years Working As Sr PWS, O/o Railway Colony, Belparhad, District Jharsuguda (Orisa) 768217- Applicant In Oa No.203/00548/2016

Petitioner (s)

versus

- 1** - Union Of India Through The Secretary, Railway Board, Ministry Of Railways, Rail Bhawan, Raisena Road, Rafi Marg, New Delhi 110001
- 2** - General Manager, South East Central Railway, New GM Building, Bilaspur Chhattisgarh 495004



3 - Chief Personnel Officer, Divisional Office South East Central Railway, Bilaspur, Chhattisgarh 492008

4 - Divisional Personnel Officer, Divisional Office South East Central Railway, Bilaspur, Chhattisgarh 492008

5 - Gajadhar Prasad Sahu

6 - Jitendra Singh

7 - Santosh Kumar Gupta

8 - Pushpram Kousale

9 - Ramsurat Yadav

10 - Dhananjay Upadhyay

11 - Rameshwar Prasad

12 - Ravi Shankar Dwivedi

13 - Santosh Kumar

14 - Amrit Lal

15 - Deena Nath Yadav

16 - Pramod Kumar Yadav

17 - Pradeep Minj

18 - Vinod Kumar Kanwar

19 - Bind Ram Kousale

20 - Dan Bhushan Tirkey

21 - Manoj Kumar Singh

Respondent No.5 to 21 all through Senior Divisional Personnel Officer, Divisional Office, Personnel Branch, SECR, Bilaspur 495004

Respondent(s)

For Petitioner (s)	:	Mr. Manoj Paranjpe, Senior Adv along with Mr. A. V. Shridhar, Adv
For Respondent(s)	:	Mr. Ramakant Mishra, DSG along with Ms. Shweta Rai, Adv

Hon'ble Smt. Justice Rajani Dubey

Hon'ble Shri Justice Amitendra Kishore Prasad

CAV Judgment

Per Rajani Dubey J.



1. The present writ petition has been filed by the petitioners against the order dated 20.01.2020 passed by the Central Administrative Tribunal in OA No.203/00432/2016, 203/00548/2016 and 203/00568/2016, whereby the Learned Tribunal has dismissed by the Original Application filed by the petitioners.
2. Brief facts of the case are that the official respondents on 21.05.2012 issued notification for filling up 17 posts of Senior Path Way Supervisor (Sr. PWS) in pay scale of Rs.9300-34800 GP 4200/-. The petitioners and the private respondents being eligible participated in the written examinations and the final panel of selected candidates was published on 14.11.2012. The private respondents no.15 was unsuccessful and could not find place in the final panel and thus he and one Shankar Singh moved an Original Application No.221/2013 before the Learned Central Administrative Tribunal, Jabalpur alleging that marks have been allotted for additional qualifications in an arbitrary manner and thus they could not be selected. The learned Tribunal vide order dated 27.08.2015 allowed the said application. Being aggrieved by the order passed by the Tribunal, the official respondents preferred WPS No.157/2016 before this Court, which was dismissed vide order dated 18.01.2016. In compliance of the order passed by the Tribunal and this Court, the official respondents vide order dated 17.02.2016 quashed the panel dated 15.02.2013. Thereafter the official respondents vide order dated 08.04.2016 published the panel afresh by granting



reservation in promotion and names of the petitioners were excluded, against which the petitioners preferred Original Applications before the Learned Tribunal and vide impugned order the Learned Tribunal dismissed the Original Applications of the petitioners. Hence the present writ petition has been filed by the petitioners.

3. Learned Senior counsel appearing for the petitioners submits that the judgments pronounced by the Hon'ble Supreme Court are law of the land and willful deviance by act of commission or omission from the same is challenging the majesty of the highest judicial forums. Learned Tribunal did not appreciate the grounds raised by the petitioners with regard to grant of reservations and promotions observing that the petitioners being failed candidates are not allowed to raise the ground without appreciating that the petitioners had no any opportunity prior to their ousting from the panel and any challenge while his being in the panel would have been rejected on the ground of locus standi meaning thereby that the petitioners had challenged the grant of reservation and promotion on the first opportunity of their becoming ineligible on account of grant of reservation in promotions. In the earlier selections which was turn down by the Hon'ble Court, the Hon'ble Court had observed that though the selection committee had applied the benchmarks in the uniform manner and that the selection committee was free to formulate modalities of selection yet directed that the grant of additional marks for additional



qualifications was arbitrary and directed the respondents to formulate the benchmarks in accordance with law. The modalities adopted by the respondents are nowhere prescribed either in the recruitment rules or any other circular in force and the learned Tribunal ought to have held that the criteria adopted by the selection committee was arbitrary and not in consonance with the directions of the Hon'ble Court. On bare perusal of the notification dated 21.05.2012 it was abundantly clear that two lists were to be prepared namely merit list 'A' comprising of candidates with 10+2 (Science and Mathematics) and Merit List 'B' comprising of Matriculation/HSLC Candidates. It was further provided in the notification that candidates having 10+2 qualifications would be considered in preference to candidates having Matriculation/HSLC qualifications. The petitioners herein are Graduates with 10+2 qualification with math and science and therefore impaneling candidates with Matriculation/HSLC qualification is dehors the criteria prescribed in the notification and as such the Learned Tribunal ought to have quashed the impugned panel. Therefore, the writ petition deserves to be allowed. Reliance has been placed on the judgment rendered by the Hon'ble Apex Court in the matter of **Vikas Pratap Singh and others vs State of Chhattisgarh and others, reported in (2013) 14 SCC 494** and the judgments rendered by this Court dated 19.04.2023 passed in **WPS No.2939/2017** in between **Neeraj Pradhan vs High Court of Chhattisgarh and others,**



judgment dated 16.10.2023 passed in **WA No.120/2023** in between **Santosh Kumar Dubey vs State of Chhattisgarh and others**, **Judgment dated 22.02.2024** passed in **WA No.395/2023** in between **Shyam Kunwar and others vs State of Chhattisgarh and and others** and other connected matters.

4. Learned counsel for the respondent supports the impugned order and submits that in the panel list dated 15.02.2023, the petitioners were selected and appointed as Senior PWS and working since 15.12.2013 but the same was quashed by the learned Tribunal as well as by this Court and the said panel list is no longer in existence. The panel was republished on 08.04.2016 and some old candidates and some new candidates were selected for the 17 posts of Senior PWS. The panel was notified way back in the year 2012, therefore it is not proper to repanel it, as the long time has passed and many of the selected candidates are already working/drawing salary of Senior PWS and the same would cause irreparable loss and trouble to the said employees. Thus, this petition is without any merit and is liable to be dismissed.
5. Heard learned counsel for the parties and perused the material available on record.
6. It is not disputed that names of 5 petitioners were included in the panel dated 15.02.2013 and their names were not included in the revised panel dated 08.04.2016. Two unsuccessful candidates



challenged the criteria for award of 30 marks before the CAT and the OA was registered as 221/2013. The CAT vide its order dated 27.08.2015 (Annexure-P/2) allowed the said OA and held in para 10 as under:-

“10. Considering that the facts of the present case and point of law involved herein is identical on all fours to the issues raised and decided in the case of Pankaj Kumar Das (supra), this Original Application is allowed and disposed of in same terms Impugned order, Annexure A-1 is quashed and set aside The respondents are directed to take further action in accordance with rules and law.”

7. After this order passed by the learned CAT, fresh criteria was laid down and after the fresh criteria new select list was published on 08.04.2016. The learned CAT described the new criteria in its order in para 5.4, which is as under:-

1	Application to work	Maximum Marks -10	(a) If an employee earns regular increments during the last three years (2010, 2011 & 2012) will be awarded full marks. (b) If an employee does not earn regular increments, 0.5 marks will be deducted for each year.
2	Attendance	Maximum Marks -10	(a) If any employee during the last 3 years (2010, 2011 & 2012) is unauthorized absent more than 10 days, 01 mark will be deducted for next each 10 days or part there off. (b) If the employee during the last 3 years (2010, 2011 & 2012) is not unauthorized absent more than 10 days will earn full 10 marks.
3	General Conduct	Maximum Marks -10	
	(a) Awards	05 Marks	If any employee earns the following awards during the last 3 years (2010, 2011 & 2012) will be awarded marks as follows: Railway Board Level – 05 Marks GM's Level – 04 Marks PHOD/CHOD Level – 03 Marks



			DRM's Level – 02 Marks
	(b) Punishment	05 Marks	(i) For major penalties during 3 years (2010, 2011 & 2012) under consideration, 01 mark should be deducted. (ii) For minor penalties other than stoppage of increment, ½ mark should be deducted. (iii) If there is no punishment during the last 3 years (2010, 2011 & 2012 under consideration, he will earn full 05 marks.

8. According to this fresh criteria, new select list was issued as Annexure-R/5 dated 08.04.2016. In this list all petitioner's names were not mentioned.
9. The learned Tribunal dismissed the original application of petitioners vide impugned order (Annexure-P/1) and held in paras 16.2 & 16.3 and 17 as under:-

“16.2 As far as marks for not earning regular increments and attendance is concerned, we find that the Selection Committee has tried to quantify the dedication of the candidates in terms of application to work and attendance. Since, these are very important parameters for considering the fitness of the candidates, who are being promoted from Group D to a Supervisor, we do not find any irregularity or illegality in awarding the marks the way it has been done. It is also to be noted that no ACRs are written at the instant time for Group D.

16.3 The issue of non preparation of two merit lists have been clarified by the official respondents through their pleadings as well as the arguments of learned counsel for the official respondents that candidates having only education qualification of 10+2 (Science and Maths) were called for exam.

17. So far as the issue of grant of marks for Diploma issued by Institution of Permanent Way Engineers is concerned, we find that the Railway Board vide RBE No.185/204 have said that this may be taken into account, but have not specified whether this has to be necessarily included therein or not. Further, it does not specify the marks to be awarded for such a Diploma. Therefore, it could be presumed that this criteria is left



to the Selection Committee. We do not find anything wrong in the procedure in this respect.”

10. It is clear that in previous petition, the petitioners were also party respondents before the learned CAT and vide order dated 27.08.2015, the learned CAT allowed the said petition, against which petition was filed by the petitioners before this Court, which was dismissed by this Court vide order dated 18.01.2016.
11. It is also clear that the learned Tribunal minutely appreciated all the documents and also properly appreciated the order of this Court and passed this order (Annexure-P/1) so we are not inclined to interfere in this order.
12. The petitioners had been working as Senior PWS since 15.02.2013 and as per the order of learned Tribunal dated 13.05.2016, they are still working on the said post.
13. This Court in **Neeraj Pradhan** (supra) held in paras 6 & 8 as under:-

“6. As such also, grant of weightage of 10% marks to respondent No.5 is erroneous consideration, therefore, he would submit that the appointment order of respondent No.5 may be set aside and since he was in merit position in the merit list his candidature for appointment on the post of Translator be considered with all consequential benefits, when the respondent No. 5 was appointed.

8. On the other hand, learned counsel for respondent No.5 would submit that in pursuance of the selection, respondent No.5 was appointed on 11-4-2017 and since then he is working on the post of translator and subsequently he has been promoted on 10-11-2022 on the post of AG-I and more than six years have lapsed, therefore, appointment of respondent No.5 may not be



disturbed as no prejudice would be caused to the petitioner even if respondent No.5 is allowed to continue in the service. To substantiate his submission he would refer to the judgment of Hon'ble Supreme Court in the case of Vikas Pratap Singh and others vs. State of Chhattisgarh and others and other connected matters, reported in (2013) 14 SCC 494 wherein Hon'ble the Supreme Court has held in para 24 to 28 which read as under:

"24. In Union of India (UOI) and Anr. v. Narendra Singh, (2008) 2 SCC 750 this Court considered the age of the employee who was erroneously promoted and the duration of his service on the promoted post and the factor of retiring from service on attaining the age of superannuation and observed as follows:

"35. The last prayer on behalf of respondent, however, needs to be sympathetically considered. The respondent is holding the post of Senior Accountant (Functional) since last seventeen years. He is on the verge of retirement, so much so, that only few days have remained. He will be reaching at the age of superannuation by the end of this month i.e. December 31, 2007. In our view, therefore, it would not be appropriate now to revert the respondent to the post of Accountant for very short period. We, therefore, direct the appellants to continue the respondent as Senior Accountant (Functional) till he reaches the age of superannuation i.e. upto December 31, 2007. At the same time, we hold that since the action of the Authorities was in accordance with Statutory Rules, an order passed by the Deputy Accountant-General canceling promotion of the respondent and reverting him to his substantive post of Accountant was legal and valid and the respondent could not have been promoted as Senior Accountant, he would be deemed to have retired as Accountant and not as Senior Accountant (Functional) and his pensionary and retiral benefits would be fixed accordingly by treating him as Accountant all through out.

36. For the foregoing reasons, the appeal is partly allowed. Though the respondent is allowed to continue on the post of Senior Accountant (Functional) till he reaches the age of retirement i.e. December 31, 2007 and salary paid to him in that capacity will not be recovered, his retiral benefits will be fixed not as Senior Accountant (Functional) but as Accountant. In the facts and circumstances of case, there shall be no order as to costs."



25. This Court in Gujarat State Deputy Executive Engineers' Association v. State of Gujarat and Ors., 1994 Supp (2) SCC 591 although recorded a finding that appointments given under the 'wait list' were not in accordance with law but refused to set aside such appointments in view of length of service (five years and more).

26. In Buddhi Nath Chaudhary and Ors. v. Akhil Kumar and Ors., (2001) 2 SCR 18, even though the appointments were held to be improper, this Court did not disturb the appointments on the ground that the incumbents had worked for several years and had gained experience and observed: "6."We have extended equitable considerations to such selected candidates who have worked on the posts for a long period." (See: M.S. Mudhol (Dr.) and Anr. v. S.D. Halegkar and Ors., (1993) II LLJ 1159 SC and Tridip Kumar Dingal and Ors. v. State of West Bengal and Ors., (2009) 1 SCC 768)

27. Admittedly, in the instant case the error committed by the respondent-Board in the matter of evaluation of the answer scripts could not be attributed to the appellants as they have neither been found to have committed any fraud or misrepresentation in being appointed qua the first merit list nor has the preparation of the erroneous model answer key or the specious result contributed to them. Had the contrary been the case, it would have justified their ouster upon re-evaluation and deprived them of any sympathy from this Court irrespective of their length of service.

28. In our considered view, the appellants have successfully undergone training and are efficiently serving the respondent-State for more than three years and undoubtedly their termination would not only impinge upon the economic security of the appellants and their dependants but also adversely affect their careers. This would be highly unjust and grossly unfair to the appellants who are innocent appointees of an erroneous evaluation of the answer scripts. However, their continuation in service should neither give any unfair advantage to the appellants nor cause undue prejudice to the candidates selected qua the revised merit list".

14. In **Santosh Kumar Dubey** (supra) held in paras 10, 11, 12 & 13 as under:-



“10. In the case of *Rajesh Kumar Daria v. Rajasthan Public Service Commission and others and other connected matters (supra)* has granted relief to the persons, who have wrongly been selected by applying wrong method of reservation policy. In the aforesaid case, their Lordships of the Supreme Court have held as under :-

“11. Similarly, we find that in regard to 24 posts for OBC, 19 candidates were selected by RPSC in accordance with merit from among OBC candidates which included three woman candidates. Thereafter, another five women were selected under the category of 'OBC - Women', instead of adding only two which

was the shortfall. Thus there were in all 8 women candidates, among the 24 OBC candidates found in the Selection List. The proper course was to list 24 OBC candidates as per the merit and then find out number of woman candidates among them, and only fill the shortfall to make up the quota of five for woman.

12. The appellants' grievance that the selection process adopted by RPSC was contrary to the reservations policy contained in Rule 9(3) is justified. But the question is whether the entire selection should appellants should be granted relief. On completion of the selection process, 97 candidates were appointed in the year 2002 and have been serving as Judicial Officers for more than five years. There has also been a subsequent selection and appointments in the year 2005. Further all the selected candidates are not impleaded as parties. Even from among the original ten writ petitioners, only seven are before us. On the facts and circumstances, we do not propose to disturb the selection list dated 30.12.2001 or interfere with the appointments already made in pursuance of it. We will only consider whether the appellants before us are entitled to relief. We find that even if the selection list had been prepared by applying horizontal reservation properly, only the appellant (*Rajesh Kumar Daria*) in this appeal, and appellant Nos.3 and 6 in the connected appeal (*Mohan Lal Soni and Sunil Kumar Gupta*) will get selected. The other appellants were not eligible to be selected.”

13. In view of the above and in view of available vacancies, we deem it just and proper to accommodate those three candidates without disturbing the selections and appointments already made, to do complete justice, in the following manner :



13.1. Sunil Kumar Gupta (general category candidate with 184 marks) and Mohan Lal Soni (OBC candidate with 169 marks), who ought to have been selected in the 2001 selection list, and who were denied appointment in view of excess selection of women candidates, shall be deemed to have been selected by RPSC. As a consequence, necessary letters of appointment shall be issued to them. Their seniority for all purposes will however be counted only from the date of actual appointment.

13.2. Rajesh Kumar Daria (OBC candidate with 171 marks) was also not selected because of the selection of excess women candidates. He ought to have been selected and appointed in the 2001 selection. We are told that Rajesh Kumar Daria got selected in the subsequent 2005 examination and was appointed in the Rajasthan Judicial Service on 12.2.2005. Considering the above fact, we direct that he should be given his position in the 2001 selection list. Interests of justice would be served if he is placed as the last candidate in the 2001 selection list. As he worked from 12.2.2005, we make it clear that such retrospective seniority will not entitle him to any monetary benefits, but will only be counted for promotions and pensionary benefits.”

11. In the matter of Pawan Kumar Agrawal & others v. Govt. of Chhattisgarh & others, Division Bench of this Court has also granted relief to the persons, who have been selected by erroneous interpretation of horizontal and compartment-wise reservation by respondent No. 2. In the aforesaid case, learned Division Bench has held as under :-

“14. On the completion of selection process, the candidates were appointed in the year 2004 and have been serving as Judicial Officers for more than seven years. There have also been subsequent selection and appointments in the year 2006, 2008 and 2011. Respondent Nos. 4 and 5 have been serving as Judicial Officers since last more than seven years. In such a state of affairs, we are of the opinion that it would not be proper to set aside the selection and appointment of respondent Nos. 4 and 5 at this juncture for no fault of theirs. At the same time, it cannot be denied that the petitioners, who were entitled to be selected and should have been placed immediately below. Ku. Shraddha Shukla and above respondent Nos.4 and 5 in the select list, have been wrongly deprived of their right to be appointed on the



post of Civil Judge Class II by erroneous interpretation of horizontal and compartment wise reservation by respondent No. 2.

15. Thus, in the totality of the facts and circumstances of the case, we deem it appropriate to direct respondent No. 1 to appoint the petitioners, subject to fulfillment of necessary formalities like police verification, etc. against the available vacancies for the post of Civil Judge (Junior Division). The seniority of the petitioners will, however, be reckoned from the date of their appointment. With the aforesaid observations, the petition is, accordingly, allowed. No order as to costs.”

12. Reverting into the instant case it is apparent from record that the appointment of appellant was made way back on 30.08.2013 and till disposal of the writ petition the appellant has worked in the department for about 10 years. Further in the instant writ appeal this court vide order dated 20.03.2023 has granted interim relief in favour of the appellant that the effect and operation of the impugned order dated 27.01.2023 passed by the learned single judge shall remain stayed till the next date of hearing. Therefore in light of the interim order passed by this court, the appellant is still working within the department. Further it has been intimated by the state counsel that the appellant has been promoted to the post of Laboratory Technician vide order dated 26.02.2021 and the said order has been placed on record by the state counsel.

13. It is worthy to note here that due to fault on the part of the selection committee of the respondent authorities, the respondent No-4 was deprived to get its fruits on time. That as per present scenario it will not proper to remove the appellant from post who had put its service with the department for about 10 years, therefore, in balance of equities and in the interest of justice, the writ appeal is partly allowed and set aside the finding of learned Single Judge with respect to the appellant, wherein his appointment order and selection was set aside by the learned Single Judge.”

15. This Court in **Shyam Kunwar** (supra) held in paras 14 & 15 as under:-

“14. The appellants had worked on the post of Rojgar Sahayak for more than 9 years and after tendering their



resignation from the post, have joined the post of Gram Panchayat Sachiv. Now, they would have even crossed their age of eligibility for a government job. On the strength of the interim order passed by this Court, they have continued in their services from the date of their joining in the month of June/July, 2015 till date. More than 9 years have elapsed, and if the entire selection process is revisited/directed to be completed as per advertisement dated 10.03.2015 if the qualification sought for in the advertisement is in accordance with the guidelines dated 29.08.2008 issued by the Department of Panchayat & Rural Development, as has been ordered by the learned Single Judge, it may have an effect on the selected candidates. Thus, at this stage, having regard to the peculiar facts and circumstances of this case, instead of setting aside the selection and appointment of the appellants / completing the selection process as per advertisement dated 10.03.2015 if the qualification sought for in the advertisement is in accordance with the guidelines dated 29.08.2008 issued by the Department of Panchayat & Rural Development, Raipur, as has been directed by the learned Single Judge, it would be appropriate to direct the State Government to consider the candidature of the writ petitioner-Asif Raza (respondent No.5 herein) for appointment, without disturbing the appointment of those who have already been appointed, joined and are continuing on their respective posts.”

15. Accordingly, the order dated 27.06.2023 passed in WPS No.2485/2015 by the learned Single Judge, so far it relates to revisiting the selection and appointment of 47 Gram Panchayat Sachiv in District Panchayat, Koriya, Baikunthpur, is concerned, the same is set aside and the State/respondents No. 1 to 4 are directed to consider the candidature of the writ petitioner-Asif Raza (respondent No. 5 herein) for grant of appointment on the post of Gram Panchayat Sachiv without disturbing the appointment of those who have already been appointed and joined their respective posts.”

16. The Hon’ble Apex Court in **Vikas Pratap Singh** (supra) held in paras 21, 22 & 23 as under:-

“21. In *Girjesh Shrivastava and Ors. v. State of M.P. and Ors.*, (2010) 10 SCC 707, the High Court had invalidated the rule prescribing selection procedure which awarded grace marks of 25 per cent and age relaxation to the



candidates with three years' long non-formal teaching experiences as a consequence of which several candidates appointed as teachers at the formal education institutions under the said rule stood ousted. This Court while concurring with the observations made by the High Court kept in view that upon rectification of irregularities in appointment after a considerable length of time an order for cancellation of appointment would severely affect economic security of a number of candidates and observed as follows:

"28. ...Most of them were earlier teaching in Non-formal education centers, from where they had resigned to apply in response to the advertisement. They had left their previous employment in view of the fact that for their three year long teaching experiences, the interview process in the present selection was awarding them grace marks of 25 per cent. It had also given them a relaxation of 8 years with respect to their age. Now, if they lose their jobs as a result of High Court's order, they would be effectively unemployed as they cannot even revert to their earlier jobs in the Non-formal education centers, which have been abolished since then. This would severely affect the economic security of many families. Most of them are between the age group of 35-45 years, and the prospects for them of finding another job are rather dim. Some of them were in fact awaiting their salary rise at the time of quashing of their appointment by the High Court."

Therefore, mindful of the aforesaid circumstances this Court directed non-ouster of the candidates appointed under the invalidated rule.

22. In [Union of India \(UOI\) and Anr. v. Narendra Singh](#), (2008) 2 SCC 750 this Court considered the age of the employee who was erroneously promoted and the duration of his service on the promoted post and the factor of retiring from service on attaining the age of superannuation and observed as follows:

"31. The last prayer on behalf of respondent, however, needs to be sympathetically considered. The respondent is holding the post of Senior Accountant (Functional) since last seventeen years. He is on the verge of retirement, so much so, that only few days have remained. He will be reaching at the age of superannuation by the end of this month i.e. December 31, 2007. In our view, therefore, it would not be appropriate now to revert the respondent to the post of Accountant for very short period. We, therefore, direct the appellants to continue the respondent as Senior Accountant (Functional) till he reaches the age of



superannuation i.e. upto December 31, 2007. At the same time, we hold that since the action of the Authorities was in accordance with Statutory Rules, an order passed by the Deputy Accountant-General canceling promotion of the respondent and reverting him to his substantive post of Accountant was legal and valid and the respondent could not have been promoted as Senior Accountant, he would be deemed to have retired as Accountant and not as Senior Accountant (Functional) and his pensionary and retiral benefits would be fixed accordingly by treating him as Accountant all through out.

32. For the foregoing reasons, the appeal is partly allowed. Though the respondent is allowed to continue on the post of Senior Accountant (Functional) till he reaches the age of retirement i.e. December 31, 2007 and salary paid to him in that capacity will not be recovered, his retiral benefits will be fixed not as Senior Accountant (Functional) but as Accountant. In the facts and circumstances of case, there shall be no order as to costs."

23. This Court in [Gujarat State Deputy Executive Engineers' Association v. State of Gujarat and Ors.](#), 1994 Supp (2) SCC 591 although recorded a finding that appointments given under the 'wait list' were not in accordance with law but refused to set aside such appointments in view of length of service (five years and more)."

17. In light of the above guidelines and facts and circumstances of the present case, it is clear that the petitioners are still working as Senior PWS since 15.02.2013. Undoubtedly their termination would not only impinge upon the economic security of the petitioners and their dependents but also adversely affect their career. This would be highly unjust and grossly unfair to the petitioners who are innocent appointees of an erroneous evaluation of the selection committee. Thus, in light of the guidelines of the Hon'ble Apex Court, we direct the respondents



to appoint the petitioners in the revised merit list placing them at the bottom of the said list.

18. With the aforesaid direction, the writ petition stands disposed of.

Sd/-
(Rajani Dubey)
Judge

Sd/-
(Amitendra Kishore Prasad)
Judge

Nirala