

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 11TH DAY OF SEPTEMBER, 2026

PRESENT

THE HON'BLE MR. JUSTICE S.G.PANDIT

AND

THE HON'BLE DR. JUSTICE K.MANMADHA RAO

WRIT PETITION NO. 4831 OF 2023 (S-KSAT)

BETWEEN:

SR. NARASAPPA
S/O LATE ANJINAPPA,
AGED ABOUT 49 YEARS,
PREVIOUSLY WORKING AS
PUBLIC RELATION OFFICER,
OFFICE OF THE DIRECTORATE OF
TECHNICAL EDUCATION,
PALACE ROAD, BANGALORE-560 001.
PRESENTLY WORKING AS REGISTRAR,
GOVERNMENT ENGINEERING COLLEGE,
RAMANAGARA-562 159.
AND R/AT NO.1383, SIR M V LAYOUT,
BENGALURU-560 060.

...PETITIONER

(BY SRI. VISHWANATH BHAT., ADVOCATE FOR
SRI. M NAGARAJAN.,ADVOCATE)

AND:

1. SRI RAMCHANDRA JOIS A P
AGED ABOUT 59 YEARS,
WORKING AS REGISTRAR,
O/O THE PRINCIPAL,
GOVERNMENT POLYTECHNIC, IMMADIHALLI,
BENGALURU-560 066.
2. STATE OF KARNATAKA
REPRESENTED BY
PRINCIPAL SECRETARY TO GOVERNMENT,
EDUCATION DEPARTMENT (HIGHER EDUCATION)



M.S.BUILDING
BENGALURU-560 001.

3. THE DIRECTOR OF TECHNICAL EDUCATION
THANTRIKA SHIKSHANA BHAVAN,
PALACE ROAD, BENGALURU-560 001.

4. SRI H JAGADISH
WORKING AS REGISTRAR,
DRR (GOVT) POLYTECHNIC,
DAVANAGERE-577 001.

...RESPONDENTS

5. C. G VENUGOPAL
S/O LATE C K GAJANANA,
AGED ABOUT 52 YEARS,
WORKING AS REGISTRAR,
S J POLYTECHNIC,
SESHADRI ROAD, BENGALURU - 560 001.

6. SRI.KIRAN KUMAR B E
AGED ABOUT 49 YEARS,
S/O SRI.B B ERAPPA,
PRESENTLY WORKING AS REGISTRAR
GOVT. ENGINEERING COLLEGE,
RAMANAGARAM DISTRICT,
RAMANAGARAM - 562 159.

7. SRI.TALATH NASREEN
AGED ABOUT 54 YEARS,
D/O LATE SRI. SYED MOKHTAR PASHA,
WORKING AS REGISTRAR,
O/O SKJTI, K R CIRCLE, BENGALURU.
R/AT NO.1293,27TH MAIN, 8TH CROSS,
J P NAGAR, 1ST PHASE,
BENGALURU - 560 078.

...PROPOSED RESPONDENTS

(BY SRI. ADITYA CHATTERJEE., ADV. FOR R1, R5, R6 & R7;
SRI.HARSHA A S ., AGA FOR R2 & R3;
R4 SERVED AND UNREPRESENTED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO I)
ISSUE A WRIT OF CERTIORARI OR ANY OTHER APPROPRIATE

WRIT, ORDER OR DIRECTION, QUASHING THE IMPUGNED ORDERS DATED 02/02/2023 IN A.NO.21/2020 ON THE FILE OF THE HON BLE KARNATAKA STATE ADMINISTRATIVE TRIBUNAL AT BENGALURU VIDE ANNEXURE-D AND DISMISS THE SAID A.NO.21/2020 AND II) PASS SUCH OTHER ORDER OR ORDERS, INCLUDING THE COSTS OF THIS PETITION.

THIS PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 29.07.2026 AND COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE S.G.PANDIT
and
HON'BLE DR. JUSTICE K.MANMADHA RAO

CAV JUDGMENT

(PER: HON'BLE DR. JUSTICE K. MANMADHA RAO)

The petitioner/respondent No.4 therein has called in question the order dated 02.02.2023 passed by the Karnataka State Administrative Tribunal (hereinafter referred to as "the Tribunal" for short) in Application No.21/2020, whereby the Tribunal directed the authorities to re-examine and review the eligibility date of 08.08.2005 assigned to the petitioner for promotion to the cadre of Office Superintendent and the consequential seniority flowing there from.

2. For convenience of reference, the parties herein are referred to as per their rankings before this Court.

3. The brief facts leading to the filing of this writ petition are that:-

The petitioner entered the services of the Department of Technical Education, Government of Karnataka, as a First Division Assistant on 23.10.1999. He was promoted to the cadre of Office Superintendent by order dated 08.08.2005 against a Scheduled Tribe (ST) backlog vacancy and reported for duty on 11.08.2005. Thereafter, he was promoted to the cadre of Registrar by order dated 27.02.2012 and reported for duty as Registrar at Government Engineering College, Ramanagara, on 12.03.2012. Respondent No.1 had entered service as a Second Division Assistant on 14.05.1988 and was promoted as First Division Assistant on 29.08.1996. In the seniority list of First Division Assistants published by memorandum dated 28.02.2005, respondent No.1 was placed at Sl.No.92, whereas the petitioner was placed at Sl.No.161. The petitioner belongs to the ST category and respondent No.1 belongs to the General Merit category.

4. The State Government introduced reservation in promotion in favour of Scheduled Castes and ST up to the post of Group-A Junior Scale by Government Order dated 27.04.1978, providing reservation to the extent of 15% and 3%, respectively. The said Government Order was subsequently modified by order dated 30.08.1979 insofar as the roster points were concerned. Rule 8 of the Karnataka Civil Services (General Recruitment) Rules, 1977, ('the 1977 Rules' for short) was thereafter amended to provide for determination and implementation of backlog vacancies in the promotional quota with effect from 27.04.1978.

5. Subsequently, by Government Order dated 24.06.1997, a separate roster was prescribed for filling backlog vacancies, wherein Additional Roster Point No.16 was reserved for Scheduled Tribe candidates. By order dated 13.04.1999, directions were issued for filling up backlog posts in terms of the Government Order dated 24.06.1997. Thereafter, by Government Order dated 18.05.2001, issued in the context of Article 16(4B) of the

Constitution of India, it was directed that backlog vacancies remaining unfilled during previous years would not be counted for determining the ceiling limit of reservation.

6. The aforesaid scheme of reservation in promotion was considered by the Apex Court in ***B.K. Pavithra v. Union of India*** reported in **(2017) 4 SCC 620, (B.K.Pavitra I)**. By judgment dated 09.02.2017, the Apex Court directed implementation of the catch-up rule and revision of seniority lists in the cadres concerned. Thereafter, Karnataka Act No.21 of 2018 providing for reservation in promotion with consequential seniority was enacted. The State Government issued Government Order dated 27.02.2019 for implementation thereof. The validity of the said enactment was upheld by the Apex Court in ***B.K. Pavitra v. Union of India***, reported in **(2019) 16 SCC 129, (B.K.Pavitra II)**. Pursuant thereto, the State Government issued order dated 15.05.2019 directing all Departments to implement the Government Order dated 27.02.2019.

7. In the meantime, the seniority list of Office Superintendents as on 01.01.2008 was published by Office Memorandum dated 06.02.2009, wherein the petitioner was placed at Sl.No.80. Respondent No.1 did not figure in the said seniority list, having been promoted to the cadre of Office Superintendent by order dated 12.02.2009 and having reported for duty in the said cadre on 13.02.2009. In the subsequent seniority list of Office Superintendents as on 01.01.2013, published by circular dated 28.10.2013, respondent No.1 was placed at Sl.No.21 and his date of promotion was shown as 13.02.2009. The petitioner's name did not figure in the said list, as he had already been promoted to the cadre of Registrar on 27.02.2012.

8. Thereafter, in the final seniority list of Office Superintendents as on 01.10.2015, published by notification dated 20.02.2016, respondent No.1 was placed at Sl.No.11 and his date of reporting for duty in the cadre of Office Superintendent was again shown as 13.02.2009. Following the judgment in **B.K. Pavithra-II** and the Government Orders dated 27.02.2019 and

15.05.2019, provisional seniority lists pertaining to the cadres of Office Superintendent and Registrar were published on 08.08.2019 and 20.08.2019, respectively. Objections were thereafter received and considered, and final seniority lists pertaining to the cadres of Office Superintendent and Registrar were published on 25.10.2019.

9. Respondent No.1 who was the applicant before the Tribunal, thereafter instituted Application No.21/2020 before the Tribunal challenging the seniority lists dated 25.10.2019 and seeking, *inter alia*, consideration of his objections, review of the promotions to the cadres of Office Superintendent and Registrar and assignment of dates of eligibility having regard to the roster. The petitioner entered appearance before the Tribunal and filed his statement of objections along with annexures. The State also filed its reply along with annexures. One of the respondents remained unrepresented and was placed *ex parte*. Upon hearing the parties, the Tribunal, by order dated 02.02.2023, partly allowed Application No.21/2020

and directed review of the dates of eligibility assigned to the petitioner in the cadres of Office Superintendent and Registrar, including the date of eligibility of 08.08.2005 assigned to him in the cadre of Office Superintendent. Aggrieved by the said order dated 02.02.2023 passed in Application No.21/2020, the petitioner has instituted the present writ petition.

10. Learned counsel for the petitioner would contend that in reply to A.No.21/2020, the State had stated that Smt. Manjuladevi was an employee of VISSJ (Aided) Polytechnic, Bhadravathi, which was taken over by the Government by order dated 26.08.1995; that her seniority as FDA was initially fixed at Sl.No.81 by reckoning her service from 30.09.1995; and that, since the notification relating to the seniority of the absorbed staff had not been finalised, the seniority of the three FDAs working in the said institution was temporarily withdrawn by Office Memorandum No.DTE 35 EST 5 2003 dated 02.08.2005. The State had also specifically stated that the candidature of Smt. Manjuladevi was not

considered for promotion to the post of Office Superintendent at the relevant point of time. Despite this, the Tribunal proceeded on the basis that the roster point against which the petitioner was promoted had been assigned to Smt. Manjuladevi.

11. It is contended that the seniority of the staff absorbed from VISSJ Polytechnic is governed by the Karnataka Education Department (Technical Education Department) (Absorption of Services of the Staff of Erstwhile VISSJ Polytechnic, Bhadravathi in the State Civil Services) (Special) Rules, 2004, ('the Absorption Rules' for short) which were gazetted on 08.06.2006. Rule 4 of the said Rules, thereof specifically provides that, for the purpose of seniority, only the service rendered from the date of absorption shall be taken into consideration. Smt. Manjuladevi is shown at Sl.No.62 of the Schedule to the said Rules in the cadre of FDA. Therefore, her seniority in Government service could be reckoned only from 08.06.2006. The petitioner had entered Government service as FDA on 23.10.1999. The effect of Rule 4 of the

Absorption Rules and the absorption of Smt. Manjuladevi were specifically brought to the notice of the Tribunal. Therefore, the Tribunal erred in proceeding on the basis that Smt. Manjuladevi was senior to the petitioner and that the roster point against which the petitioner was promoted had been assigned to her.

12. Learned counsel further submits that the vacancy register produced as Annexure-R18 was not considered by the Tribunal. The petitioner had specifically stated in his reply that, as on 08.08.2005, there were two backlog vacancies for ST candidates. According to the vacancy register, Roster No.2 and Additional Roster No.16 in the 9th circle and Roster No.2 in the 10th circle were filled with ST candidates by operating the roster under the Government Orders dated 30.08.1979, 24.06.1997 and 13.04.1999. The State, on the other hand, had stated that there was only one backlog vacancy as on 08.08.2005. It is submitted that the State's assertion was not supported by the vacancy register, whereas the petitioner had produced Annexure-R18 in support of his case. The

Tribunal has neither considered Annexure-R18 nor recorded any finding on the specific dispute regarding the number of backlog vacancies.

13. Learned counsel further submits that the Tribunal also erred in applying the "next below" principle to support the retrospective promotion of Smt. Manjuladevi. The next below rule relating to pay fixation cannot be treated as conferring power to grant retrospective promotion contrary to the governing Absorption Rules. In view of Rule 4 of the Absorption Rules, Smt. Manjuladevi could reckon seniority only from 08.06.2006 and, therefore, she could not have occupied the roster point against which the petitioner was promoted on 08.08.2005. Even assuming that she was senior to the petitioner, Annexure-R18 establishes that there was no excess promotion of ST candidates on 08.08.2005. The very basis for directing revision of the petitioner's date of eligibility is, therefore, erroneous.

14. It is also contended that the petitioner's seniority in the cadre of Office Superintendent had

remained undisturbed for nearly 15 years from 08.08.2005 and respondent No.1 had not challenged the same during that period. It is contended that settled seniority ought not to be disturbed after a long lapse of time. The Tribunal failed to consider the settled seniority, Rule 4 of the Absorption Rules and the material contained in Annexure-R18. The impugned direction to revise the petitioner's date of eligibility is, therefore, liable to be set aside.

15. In support of the contentions, learned counsel appearing for the petitioner has placed reliance on the following judgments:-

- ***Dayaram Asanand Gursahani v. State of Maharashtra and others* reported in (1984) 3 SCC 36;**

2. The appellant was enrolled as an advocate on December 14, 1951. In response to a notification inviting applications for the purpose of recruiting members of the Bar directly as District Judges under Rule 5(2)(i)(b) of the Rules, the appellant made an application for considering his case also for recruitment as a District Judge. Ultimately five persons were selected and appointed as Assistant Judges by notification issued on January 2, 1967 and the appellant was one of them. All of them were first posted as Assistant Judges as per the proviso to Rule 5(2)(i)(b) of the Rules. On February 19, 1973, the appellant was appointed to officiate in the cadre of District Judges. He was confirmed as a District Judge with effect from August 1, 1975 as per Notification No. A 1274/75 dated December 9, 1975. The seniority of the appellant in the cadre of District Judges was fixed on the

basis of his actual appointment as District Judge in April, 1973. The first contention of the appellant is that on a true construction of Rule 5(2)(i)(b) of the Rules, he should be deemed to have entered the cadre of District Judges when he was initially recruited as a District Judge and posted as an Assistant Judge under the proviso to Rule 5(2)(i)(b) of the Rules. This claim of the appellant has been rejected by the High Court. We do not propose to consider this contention on the ground of laches as we do not find any satisfactory explanation for the delay of nearly nine years on the part of the appellant in questioning the correctness of the seniority assigned to him in the year 1973.

- ***B.S.Bajwa and another v. State of Punjab and others* reported in (1998) 2 SCC 523;**

6. Obviously on this conclusion alone the writ petition should have been dismissed by setting aside the judgment of the Single Judge allowing the LPA without any caveat. However, the Division Bench, after reaching the above conclusion, proceeded to grant the benefit of a much earlier date, namely, 6-4-1964 as the date of appointment on the basis of a concession of the Additional Advocate General made therein without considering the effect of the same or of taking into account the inconsistency with its earlier finding. We have no doubt that the concession on this point, being one of law, it cannot bind the State and, therefore, it was open to the State to withdraw as it has been done by filing a review petition in the High Court itself. That apart that concession made on behalf of the State cannot bind D.P. Bajaj and Jagir Singh or anyone else who would be adversely affected thereby. Those persons, therefore, have an independent right to assail that view taken by the Division Bench. It is with regard to this part of the judgment of which we say that even though the LPA is said to have been allowed but it has the effect and in reality of being dismissed because it grants certain benefits to B.S. Bajwa and B.D. Gupta who were the respondents therein.

7. Having heard both sides we are satisfied that the writ petition was wrongly entertained and allowed by the Single Judge and, therefore, the judgments of the Single Judge and the Division Bench have both to be set aside. The undisputed facts appearing from the record are alone

sufficient to dismiss the writ petition on the ground of laches because the grievance was made by B.S. Bajwa and B.D. Gupta only in 1984 which was long after they had entered the department in 1971-72. During this entire period of more than a decade they were all along treated as junior to the other aforesaid persons and the rights inter se had crystallised which ought not to have been reopened after the lapse of such a long period. At every stage others were promoted before B.S. Bajwa and B.D. Gupta and this position was known to B.S. Bajwa and B.D. Gupta right from the beginning as found by the Division Bench itself. It is well settled that in service matters the question of seniority should not be reopened in such situations after the lapse of a reasonable period because that results in disturbing the settled position which is not justifiable. There was inordinate delay in the present case for making such a grievance. This alone was sufficient to decline interference under Article 226 and to reject the writ petition.

- **Karnataka Power Corporation Ltd., through its Chairman & Managing Director and another v. K. Thangappan and others** reported in **(2006) 4 SCC 322;**

5. The factual position as noted above clearly shows that for nearly two decades Respondent 1 workman had remained silent. As rightly pointed out by learned counsel for the appellants even in the representations made in 1997 and 1998 there was no reference to the representations claimed to have been made in 1982 and/or 1989. Even if that would have been made, there was considerable delay even in making the representations. There is no dispute that mere making of representations cannot justify a belated approach.

10. It has been pointed out by this Court in a number of cases that representations would not be adequate explanation to take care of delay. This was first stated in *K.V. Rajalakshmiah Setty v. State of Mysore* [(1967) 2 SCR 70 : AIR 1967 SC 993]. This was reiterated in *Rabindranath Bose case* [(1970) 1 SCC 84 : AIR 1970 SC 470] by stating that there is a limit to the time which can be considered reasonable for making representations and if the Government had turned down one representation the making of another representation on

similar lines will not explain the delay. In State of Orissa v. Pyarimohan Samantaray [(1977) 3 SCC 396 : 1977 SCC (L&S) 424 : AIR 1976 SC 2617] making of repeated representations was not regarded as satisfactory explanation of the delay. In that case the petition had been dismissed for delay alone. (See State of Orissa v. Arun Kumar Patnaik [(1976) 3 SCC 579 : 1976 SCC (L&S) 468 : AIR 1976 SC 1639] also.)

- **V. Vincent Velakanni v. Union of India and others**
reported in 2024 SCC OnLine SC 2642; and

8. The CAT allowed Original Application No. 821 of 2007 preferred by the appellant herein vide order dated 23rd January, 2009, basing its decision on the order passed in Original Application No. 831 of 2007 considering the fact that both the workers were identically employed in respondent No. 2-Factory and directed that the appellant was entitled to be considered for his claim of seniority and directed the respondents¹⁰ to revise the seniority list accordingly.

28. The draft seniority list was published on 28th July, 2006. The appellant never questioned the denial of promotion to the highly skilled grade, till much after the publication of the draft seniority list. Admittedly, co-employees who were below the appellant in the select list of the year 1996 were promoted in the intervening period without any objection being raised by the appellant. After the publication of the draft seniority list in the year 2006, he chose to challenge the same and to consider his promotion to highly skilled grade with effect from 20th May, 2003 by filing an Original Application²⁶ before CAT only in the year 2007. Thus, it was the first time in 2007 that the appellant claimed his promotion with retrospective effect. However, this benefit of retrospective promotion was neither granted by the CAT nor by the High Court and thus, there is no need to delve into this aspect further.

29. The primary issue which requires adjudication is as to whether the seniority of the appellant is to be reckoned from the date of induction/initial appointment or as per the date of promotion/confirmation in the skilled grade.

49. It can easily be inferred that in the intervening period, before the GO dated 4th August, 2015 came to be issued, seniority of multitudes of employees must have been fixed according to the GO dated 24th December,

2002, which is according to the date of promotion to skilled grade and not from the date of induction/entry in semi-skilled grade. As a matter of fact, respondent Nos. 3, 4 and 5 who were below the appellant in the order of merit at the time of induction in the semi-skilled grade, have been promoted to the skilled grade and the highly skilled grade much before the appellant by application of the GO dated 24th December, 2002. The appellant did not question their promotions before any Court or Tribunal at any stage.

- ***S. Subramanian v. Joint Registrar of Co-operative Societies, Sivagangai and others reported in 2006 SCC OnLine Mad 1163;***

16. Learned AAG appearing for the respondent-State and learned counsel appearing for the private respondents, opposing the writ petition, would submit that the impugned order passed by the Tribunal does not call for interference in exercise of the jurisdiction under Articles 226 and 227 of the Constitution of India. It is contended that the grievance of the petitioner proceeds on the premise that his promotion to the cadre of Office Superintendent on 08.08.2005 and the seniority flowing therefrom had attained finality, whereas the exercise undertaken in the year 2019 was pursuant to the statutory mandate contained in the Karnataka Extension of

Consequential Seniority to Government Servants Promoted on the Basis of Reservation (to the Posts in the Civil Services of the State) Act, 2018 and the Government Orders issued thereafter. According to the respondents, the promotions and seniority lists were required to be reviewed in accordance with the applicable reservation policy and roster-point system and, therefore, the challenge before the Tribunal was not a belated attempt to reopen a concluded promotion, but a challenge to the correctness of the revision exercise undertaken in the year 2019.

17. It is further contended that although the Absorption Rules came into force on 08.06.2006, Rule 3 of the said Rules provides that the employees covered by the Rules shall be deemed to have been absorbed with effect from the date of taking over of the VISSJ Polytechnic, Bhadravathi. The date of such taking over is stated to be 26.08.1995. Thus, according to the respondents, in terms of Rules 3 and 4 of the Absorption Rules, the service of Smt. Manjuladevi in the feeder cadre is required to be

reckoned from the date of such absorption and not from the date on which the Rules were gazetted. Since the petitioner entered the cadre of First Division Assistant only on 23.10.1999, it is contended that Smt. Manjuladevi was senior to the petitioner in the feeder cadre.

18. Learned counsel would further contend that the petitioner himself had accepted the seniority of Smt. Manjuladevi on earlier occasions. Reference is made to the seniority list dated 06.02.2009, wherein Smt. Manjuladevi was shown above the petitioner, without any objection having been raised by him at that stage. It is therefore contended that the petitioner cannot, for the first time after the order of the Tribunal, seek to contend that Smt. Manjuladevi was junior to him.

19. It is contended with regard to the promotions made on 08.08.2005, that 36 vacancies in the cadre of Office Superintendent were being filled and, on application of the applicable 33-point roster, three vacancies were earmarked for Scheduled Tribe candidates two regular roster points and one backlog roster point. According to

the respondents, three ST candidates, including the petitioner, were accordingly promoted against the three available ST points. Smt. Manjuladevi's promotion was subsequently granted with retrospective eligibility from 08.08.2005, after her seniority in the feeder cadre was determined. The respondents contend that, in these circumstances, the petitioner's promotion could not be protected by treating Smt. Manjuladevi as junior to him.

20. The respondents would dispute the petitioner's assertion that there were two ST backlog vacancies available in the promotion exercise of 2005. It is submitted that the relevant vacancy register and roster position disclose only one backlog vacancy, in addition to the two regular ST roster points, making a total of three ST vacancies out of the 36 vacancies filled under the order dated 08.08.2005. It is contended that the statement/calculation relied upon by the petitioner is his own calculation and does not form part of the vacancy register or its continuation and, therefore, cannot be treated as an authentic record of the available vacancies.

21. It is further contended that the promotions made from 27.04.1978 were required to be reviewed in terms of the applicable Government Orders and that, on such review, backlog vacancies were identified and dealt with in accordance with the roster system. It is contended that the petitioner's calculation does not take into account the manner in which the backlog vacancies were identified and adjusted under the Government Orders governing reservation in promotion. The State accordingly maintains that there was no suppression of the factual position relating to the ST backlog as on 08.08.2005.

22. It is further contended by the respondents that the petitioner cannot rely upon the earlier seniority position as creating an indefeasible right in his favour, since the 2018 Act required the existing promotions and seniority lists to be revised so as to bring them in conformity with the applicable reservation orders. Reliance is placed on the decision of the Apex Court in **B.K. Pavitra (II)** and the consequential Government Order dated 15.05.2019. According to the respondents, the provisional

seniority lists were published in 2019, and the respondents raised their objections pointing out the alleged errors in the review of the petitioner's promotion and seniority. Their grievance before the Tribunal was consequently directed against the manner in which the 2019 revision had been undertaken.

23. Learned counsel for the respondents would also contend that the reliance placed by the petitioner upon the so-called 'Next-Below Rule' is misplaced. According to the respondents, the said rule could not be invoked to perpetuate a promotion made in excess of the applicable roster points. It is submitted that against a particular roster point there can be only one incumbent and, therefore, once it was found that the petitioner's promotion was in excess of the applicable reservation quota, his date of eligibility was liable to be revised in accordance with the roster and his seniority in the feeder cadre. The Tribunal, according to the respondents, has merely directed the authorities to undertake such revision

in accordance with law and has not ordered any arbitrary reversion or recovery.

24. It is also contended that the impugned order adequately protects the interests of the petitioner and other affected employees. The Tribunal has directed that the revised date of eligibility be worked out in accordance with the applicable rules and roster, while protecting the pay and emoluments of the petitioner for the relevant period and providing an opportunity to the affected employees to place their objections before the authorities. The respondents therefore submit that the impugned order is a reasoned order based upon the statutory and regulatory framework governing reservation and consequential seniority and that no ground is made out for interference by this Court in exercise of its writ jurisdiction.

25. In support of the contentions, learned counsel appearing for the respondents has placed reliance on the following judgments:-

- ***Ajay Kumar Shukla and others v. Arvind Rai and others and connected matters*** reported in **(2022) 12 SCC 579;**

Seniority Lists can be interfered with if they are prepared in contravention to the statutory provisions even if the previous lists are not challenged and Impleadment of a few of the affected Individuals sufficiently complies the principle of joinder of parties.

- ***Ajit Singh and others (II) v. State of Punjab and others*** reported in **(1999) 7 SCC 209;**

Seniority in the promotional cadre will count only from the date on which an individual would have otherwise got normal promotion, and while promotions made in excess of roster are protected, such promotes cannot claim seniority.

- ***Rupa Rani Rakshit and others v. Jharkhand Gramin Bank and others*** reported in **(2010) 1 SCC 345;**

12. It is now well settled that if an appointment or promotion is made without considering the claims of all the available eligible candidates and/or without following the relevant rules, the service rendered in pursuance of such illegal appointment or promotion cannot be equated to service rendered in pursuance of an appointment or promotion validly and lawfully made. Whenever a person is promoted to a post without following the rules prescribed for such promotion, he should be treated as a person not regularly promoted to that post. Consequently, where promotions are governed by the Rules, in computing the length of service, in the post to which an employee is promoted, it is not permissible to include the period of service rendered in pursuance of an illegal promotion which is subsequently set aside.

- ***P.S.Mahal and others v. Union of India and others* reported in (1984) 4 SCC 545;**

32. We have already pointed out that there is no inherent vice in the quota rule being operated through the rotational rule of seniority. Where the rotational rule of seniority is adopted, the relative seniority of promotees from different sources has to be determined on the basis of a roster maintained in accordance with the quota rule, so that when promotion of an officer is regularly made within his quota, he is fitted into the vacancy reserved for promotees from his source and his seniority is reckoned from the date when such vacancy arose. But this rotational rule of seniority can work only if the quota rule is strictly implemented from year to year. Some slight deviations from the quota rule may not be material but as pointed out by Palekar, J. in the *Bishan Sarup Gupta* case, "if there is enormous deviation, other considerations may arise". If the rotational rule of seniority is to be applied for determining seniority amongst officers promoted from different sources, the quota rule must be observed. The application of the rotational rule of seniority when there is large deviation from the quota rule in making promotions is bound to create hardship and injustice and result in impermissible discrimination. That is why this Court pointed out in *A.K. Subraman* case [(1975) 1 SCC 319; (1975) 2 SCR 979 : 1975 Lab IC 254] that

"... when recruitment is from two or several sources it should be observed that there is no inherent invalidity in introduction of quota system and to work it out by a rule of rotation. The existence of a quota and rotational rule, by itself, will not violate Article 14 or Article 16 of the Constitution.... It is the unreasonable implementation of the same which may, in a given case, attract the frown of the equality clause." [SCC para 28, p. 333; SCC (L&S) p. 50]

The rotational rule of seniority is inextricably linked up with the quota rule and if the quota rule is not strictly implemented and there is large deviation from it regularly from year to year, it would be grossly discriminatory and unjust to give effect to the rotational rule of seniority. We agree wholly with the observation of D.A. Desai, J. in A. Janardhana v. Union of India [(1983) 3 SCC 601 : 1983 SCC (L&S) 467] that

"... where the quota rule is linked with the seniority rule if the first breaks down or is illegally not adhered to giving effect to the second would be unjust, inequitable and improper." [SCC para 29, p. 621: SCC (L&S) p. 487]

This was precisely the reason why the Court in the first Bishan Sarup Gupta case [(1973) 3 SCC 1 : 1973 SCC (L&S) 1 : AIR 1972 SC 2627 : 1975 Supp SCR 491 : (1973) 1 SLR 115] held that with the collapse of the quota rule, the rule of seniority set out in Rule 1(f)(iii) also went.

33. Now in the present case the record shows that there has been enormous deviation from the quota rule in the promotions of Assistant Executive Engineers and such deviation has continued from year to year over a period of almost 25 years. We have in an earlier part of this judgment adverted to the fact that as on December 22, 1959 there was a shortfall in the promotions of Assistant Executive Engineers to the extent of 86, because the quota rule had not been properly implemented from 1953 upto December 22, 1959 and promotions of Assistant Executive Engineers had not been effected according to the quota applicable to them. It is interesting to note that even after December 22, 1959, the quota was consistently breached from year to year except for four or five years and there was massive under-recruitment of Assistant Executive Engineers with the result that as on July 31, 1975, the cumulative shortfall in promotions of Assistant Executive Engineers was 206 while there was corresponding excess in promotions of Assistant Engineers to the extent of the same number. Though there was such large deficiency in promotions of

Assistant Executive Engineers and corresponding excess in promotions of Assistant Engineers upto July 31, 1975, no attempt was made by the Government to set right this imbalance by stepping up the recruitment of Assistant Executive Engineers in the subsequent years so as to restore the balance in the composition of the cadre of Executive Engineers. On the contrary, the under-recruitment of Assistant Executive Engineers continued uninterrupted and by the end of 1981 the shortfall in the promotions of Assistant Executive Engineers increased to 247 with corresponding excess in the promotions of Assistant Engineers. This enormous deviation from the quota rule on account of massive under-recruitment of Assistant Executive Engineers has led to grave distortion and it is difficult to see how, in this situation, the rotational rule of seniority can be applied consistently with the mandate of equality enshrined in Articles 14 and 16. The rotational rule of seniority must obviously break down when there is such massive departure from the quota rule regularly from year to year leading to continuously increasing deficiency in promotions of Assistant Executive Engineers and corresponding excess in promotions of Assistant Engineers.

- ***Nitoli and others v. State of Nagaland and others*** reported in **2008 SCC OnLine Gau 428**; and
- ***M/s. Karnataka Power Transmission Corporation Ltd., v. B Gurumurthy and others*** reported in **2020 SCC OnLine Kar 4496**.

43. In *B.K. Pavitra II*, the Hon'ble Supreme Court considered, as to, whether, the catch-up rule and consequential seniority would violate the constitutional mandated of equality and it was held that the incorporation of consequential seniority does not violate the constitutional mandate. It was further observed in *B.K. Pavitra II* that Ss. 3 and 4 of the

Reservation Act, 2017 came into force on 17-6-1995. But the other provisions came into force "at once" as provided in S. 1(2). The Hon'ble Supreme Court also noted that promotions were saved both in Virpal Singh, Ajit Singh II and also in Badappanavar, in respect of promotions granted to candidates based on consequential seniority which took place before 1-3-1996, which were specifically protected. Hence, it was logical for the legislature to protect consequential seniority. The object of the Reservation Act, 2017 was to accord consequential seniority to promotees against roster points. Hence, the Hon'ble Supreme Court found no reason to hold that the provisions in regard to retrospectively in the Ratna Prabha Committee report are either arbitrary or unconstitutional.

26. Heard learned counsel appearing for the petitioner and learned AAG appearing for the State and learned counsel appearing for the private respondents.

27. Having considered the contentions advanced, material placed on record and upon perusal of the impugned order and the judgments relied upon by the learned counsel for the parties, it is observed by this Court that the material on record does not support the aforesaid finding of the Tribunal. In its reply before the Tribunal, the State had specifically stated that Smt. Manjuladevi was an employee of VISSJ (Aided) Polytechnic, Bhadravathi, which was taken over by the Government by order dated

26.08.1995; that her seniority as FDA had initially been fixed at Sl.No.81 by reckoning her service from 30.09.1995; and that, since the notification relating to the seniority of the absorbed staff had not been finalised, the seniority of the three FDAs working in the said institution had been temporarily withdrawn from the seniority list by Office Memorandum No.DTE 35 EST 5 2003 dated 02.08.2005. The State had further specifically stated that the candidature of Smt. Manjuladevi was not considered for promotion to the post of Office Superintendent at the relevant point of time. In the circumstances, there was no basis for the Tribunal to proceed on the premise that the roster point against which the petitioner was promoted on 08.08.2005 had been assigned to Smt. Manjuladevi.

28. The Tribunal has also proceeded on the premise that Smt. Manjuladevi was senior to the petitioner in the feeder cadre and that the roster point against which the petitioner was promoted on 08.08.2005 was liable to be assigned to her. The seniority of the employees absorbed from VISSJ Polytechnic, Bhadravathi, is governed by the

Absorption Rules. The petitioner had specifically relied upon the said Rules and contended that the claim of Smt. Manjuladevi to the roster point in question could not be accepted in the manner suggested by the applicant. The State had also placed its stand on record regarding the absorption and seniority position of the employees of the erstwhile institution. In such circumstances, before arriving at a conclusion that the roster point against which the petitioner was promoted belonged to Smt. Manjuladevi, the Tribunal was required to examine the effect of the relevant provisions of the Special Rules, the service particulars of the concerned employee and the contemporaneous records relating to seniority. The impugned order does not disclose any such examination. Consequently, the finding that the petitioner occupied a roster point which ought to have been assigned to Smt. Manjuladevi cannot be sustained.

29. There is also material which directly bears upon the roster position prevailing on 08.08.2005. The petitioner had produced the vacancy register as Annexure-

R18 before the Tribunal and specifically relied upon the roster position relating to the 36 vacancies in the cadre of Office Superintendent. His specific case was that, as on 08.08.2005, there were two backlog vacancies for Scheduled Tribe candidates and that Roster No.2 and Additional Roster No.16 in the 9th circle and Roster No.2 in the 10th circle were filled by ST candidates by operating the roster in terms of the Government Orders dated 30.08.1979, 24.06.1997 and 13.04.1999. The State, on the other hand, had contended that only one backlog vacancy was available in addition to the regular Scheduled Tribe roster points. Thus, the actual roster position and the number of backlog vacancies were material issues requiring consideration. The impugned order, however, does not advert to Annexure-R18 or record any finding on the specific roster position relied upon by the petitioner. When the direction to revise the petitioner's date of eligibility rests upon the conclusion that his promotion was against a roster point available to another employee,

consideration of the relevant vacancy register was indispensable.

30. The decisions relied upon by the learned counsel for the respondents, emphasize the necessity of adherence to the applicable quota, roster and the rules governing promotion. The said principles cannot, however, dispense with the requirement of establishing from the relevant service records that the promotion in question was in excess of the prescribed roster. In the present case, the Tribunal has not recorded such a finding on the basis of the vacancy register or any other contemporaneous record. Likewise, the decision in **B.K. Pavithra-II** and the consequential Government Orders dated 27.02.2019 and 15.05.2019 required the seniority and promotion position to be examined in accordance with the applicable statutory framework. They do not authorize alteration of an employee's date of eligibility on the basis of a factual premise which is not established from the record.

31. The Tribunal also referred to the "next below" principle while directing revision of the petitioner's date of eligibility. The said principle cannot, by itself, constitute a basis for altering the petitioner's promotion dated 08.08.2005 unless it is first established that the roster point against which he was promoted was not available to him. In the present case, the foundational finding that the said roster point had already been assigned to Smt. Manjuladevi is itself unsupported by the material considered by the Tribunal. Consequently, the direction founded upon such premise cannot be sustained.

32. It is observed that the petitioner was promoted as Office Superintendent on 08.08.2005 and reported for duty on 11.08.2005. In the seniority list of Office Superintendents as on 01.01.2008, published by Office Memorandum dated 06.02.2009, he was placed at Sl.No.80. Respondent No.1 was thereafter promoted as Office Superintendent by order dated 12.02.2009 and reported for duty on 13.02.2009. His date of promotion/reporting was consistently reflected as

13.02.2009 in the subsequent seniority list dated 28.10.2013 and the final seniority list dated 20.02.2016. The petitioner had, in the meantime, been promoted as Registrar by order dated 27.02.2012 and had reported for duty on 12.03.2012. The objection to the petitioner's position was raised only after publication of the provisional seniority lists dated 08.08.2019 and 20.08.2019, which culminated in the final seniority lists dated 25.10.2019.

33. The principle that settled seniority ought not ordinarily to be reopened after an inordinate lapse of time is well recognized. In the judgments relied upon by the petitioner, the Apex Court has emphasized the significance of delay and the need to protect settled service positions where rights have crystallized over a period of time. In the present case, the petitioner's promotion to the cadre of Office Superintendent was made on 08.08.2005 and his position was reflected in the successive seniority records. Respondent No.1 was promoted to the same cadre only on 12.02.2009 and his date of promotion was consistently shown as 13.02.2009. The objection to the petitioner's

seniority was raised only in the course of the revision exercise undertaken in 2019 pursuant to **B.K. Pavithra-II**. This circumstance also militates against disturbing the petitioner's date of eligibility in the absence of clear material establishing that his original promotion was contrary to the applicable roster.

34. The Tribunal was, therefore, required to first determine, on the basis of the governing Absorption Rules, the relevant seniority position, the actual roster position and the vacancy register pertaining to the promotion dated 08.08.2005. Instead, the direction under challenge proceeds on the premise that the roster point against which the petitioner was promoted had been assigned to Smt. Manjuladevi. That premise is not borne out by the material noticed above. The failure to consider the relevant material, particularly Annexure-R18 and the effect of Rule 4 of the Absorption Rules, has resulted in an erroneous conclusion.

35. In the light of the foregoing discussion, this Court is of the considered view that the Tribunal was not justified in directing revision of the date of eligibility assigned to the petitioner in the cadres of Office Superintendent and Registrar without first recording findings on the applicability and effect of the relevant Absorption Rules, the actual roster position prevailing as on 08.08.2005 and the vacancy records relied upon by the parties. The impugned order proceeds on a factual premise which has not been established upon consideration of the relevant material placed on record. The failure to examine the governing statutory provisions and the material documents having a direct bearing on the controversy has vitiated the impugned order. Consequently, the order dated 02.02.2023 passed by the Tribunal, insofar as it grants relief against the petitioner and directs revision of his date of eligibility, calls for interference under Articles 226 and 227 of the Constitution of India.

36. In view of the foregoing discussions, this Court proceeds to pass the following:-

ORDER

(i) The writ petition is ***allowed***.

(ii) The order dated 02.02.2023 passed by the Karnataka State Administrative Tribunal, Bengaluru, in Application No.21/2020, insofar as it directs review/revision of the date of eligibility assigned to the petitioner in the cadres of Office Superintendent and Registrar, is hereby quashed and set aside.

(iii) Consequently, Application No.21/2020 filed by respondent No.1 who is the applicant before the Tribunal stands dismissed.

No order as to costs.

**Sd/-
(S.G.PANDIT)
JUDGE**

**Sd/-
(DR.K.MANMADHA RAO)
JUDGE**