



2015:UHC:4270

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Writ Petition (S/B) No. 278 of 2013

Nandan Giri Petitioner

Versus

State of Uttarakhand and others Respondents

Present: Mr. U.K. Uniyal, Senior Advocate assisted by Mr. Shashank Pande, Advocate for the petitioner.
Mr. P.C. Bisht, Standing Counsel for the State of Uttarakhand/
respondent Nos. 1 & 2.
Mr. I.M. Quddusi, Advocate assisted by Mr. Syed Nadeem,
Advocate for respondent Nos. 4 & 5.

Writ Petition (S/B) No. 304 of 2013

Manvendra Singh and others Petitioners

Versus

K.S. Negi and others Respondents

Present: Mr. Manoj Tiwari, Senior Advocate assisted by Mr. Alok Mahra Advocate for the petitioners.
Mr. I.M. Quddusi, Advocate assisted by Mr. Syed Nadeem,
Advocate for respondent Nos. 1 & 2.
Mr. P.C. Bisht, Standing Counsel for the State of Uttarakhand/
respondent Nos. 3 & 4.

AND

Writ Petition (S/B) No. 196 of 2014

State of Uttarakhand and another Petitioners

Versus

K.S. Negi and others Respondents

Present: Mr. P.C. Bisht, Standing Counsel for the State of Uttarakhand/
petitioners.
Mr. I.M. Quddusi, Advocate assisted by Mr. Syed Nadeem,
Advocate for respondent Nos. 1 & 2.



**Coram : Hon'ble K.M. Joseph, C.J.
Hon'ble V.K. Bist, J.**

JUDGMENT

Date: 25th June, 2015

K.M. Joseph, C.J. (Oral)

These writ petitions being connected, we are disposing of the same by a common judgment.

2. These writ petitions are lodged essentially against the order passed by the Public Services Tribunal. The matter relates to Commercial Tax Department. The tussle is between promotees and direct recruits. The Tribunal was approached by the private respondents, who are referred to as 'the applicants' seeking the following reliefs:-

“In view of the facts mentioned in para 4 and grounds taken in para 5 of this petition, the petitioners pray that their seniority may be fixed from the date of entry (03 December 2007) in the cadre of the Commercial Tax Officer Grade-2 & they may be placed over the direct recruits selected in 2009.

The petitioners may be declared to be entitled to all consequential benefits as a result of revision of their seniority.”

3. The applicants were given promotions as Commercial Tax Officers. They were given promotions on ad-hoc basis in the year 2007. Subsequently, in the year 2010, they were appointed substantively, i.e. they were appointed after consultation with the Public Service Commission. Thereafter, a provisional seniority list was prepared. Finding their position as being below that of the direct recruits, they filed objections; objections were overruled; a final seniority list was published. It is thereupon that they approached the Tribunal, which we have already noticed. Before the Tribunal counter affidavits were filed by the contesting litigants. The Tribunal, however, took the view that the applicants are entitled to seniority taking into consideration the ad hoc promotion and the service rendered on the basis of the orders



granting them ad hoc promotions. It is feeling aggrieved by the same that the writ petitions, three in number, are filed before this Court.

4. We heard Shri U.K. Uniyal, learned Senior Counsel and Advocate General, who appears in Writ Petition (S/B) No. 278 of 2013 for the petitioner, Shri Manoj Tiwari, learned Senior Counsel appearing on behalf of the petitioners in Writ Petition (S/B) No. 304 of 2013 and the learned Government Pleader on behalf of the State in Writ Petition (S/B) No. 196 of 2014. On behalf of the applicants, we heard Shri I.M. Quddusi, learned counsel.

5. Learned Advocate General appearing on behalf of the petitioner would submit that the applicants accepted the promotion which was given in the year 2010. The orders of promotions were not challenged. He points out that the ad hoc promotion was effected without consultation of the Public Service Commission as was required under the rules. There was no challenge to the Rules or to the promotion.

6. Shri Manoj Tiwari, learned Senior Counsel for the petitioners would point out that the seniority list has not been challenged. The applicants have accepted the promotions and they have not challenged their promotions. He further points out that the petitioners' stand is squarely covered by the judgment of Hon'ble Apex Court, reported in 2012 (8) SCC 633 (*State of Haryana and others versus Vijay Singh and others*). He also draws our attention to a judgment of the Hon'ble Apex Court, which according to him, provide complete answer to the contentions of the applicants; that is reported in 2007 (1) SCC 683 (*State of Uttaranchal versus Dinesh Kumar Sharma*). The learned Standing Counsel also adopted the arguments of the petitioners. He would point out that the ad hoc promotion is only a stop gap arrangement and the promotion was accepted as such by the applicants and they have not



challenged the same. He also points out that final seniority list was published on 01.03.2011 and the same has not been challenged and no case has been made out for interference.

7. Shri I.M. Quddusi, learned counsel appearing on behalf of the applicants would draw our attention to the following statutory rules. He refers to the following rules of Uttaranchal Promotion by Selection in Consultation with Public Service Commission (Procedure) Rules, 2003 (hereinafter referred to as 'the 2003 Rules'), which read as under:-

“4(f) “Year of recruitment” means the period of twelve months beginning from the first day of July of a calendar year.

9. The appointing authority shall forward to the commission the eligibility list or lists together with the gradation list of all persons with in the field of eligibility and the character rolls of the candidates included in the eligibility list or lists and also intimate to it the number of vacancies of each year of recruitment for which selection is proposed.

13. The Selection Committee shall prepare two lists in order of merit, namely select list, containing names of candidates recommended for substantive appointment against the permanent vacancies intimated to the Commission under rule 9 :

Provided that if recruitment is made for vacancies occurring during more than one year of recruitment, the selection in respect of each such year shall be made from the eligibility list prepared for that year. In such a case, the names of candidates selected against vacancies of one year will be excluded from the eligibility list or lists of subsequent year or years, as the case may be, before making the selection from eligibility lists of the second and subsequent years.”

8. Shri Quddusi, would still further draw our attention to Rule 16 of the 2003 Rules. He would contend that this is a case where the applicants were entitled to be considered as against the vacancies which arose in the year 2003-2004. He would submit that under the scheme of the Rules, the recruitment must proceed with



reference to broad sources of recruitment, namely, promotion and direct recruitment. He emphasizes the concept of year of selection, which is, in fact, mentioned in the order of appointment in the year 2010. In other words, he would point out that a perusal of the order of appointment would show that it refers to the year 2003-2004 in regard to the applicants. This would mean that they have been appointed with reference to the said years and this in substance would be crucial in taking a decision in relation to the seniority of the parties. He drew our attention to the judgments of the Hon'ble Apex Court, reported in 1999 (1) SCC 280 and 2012 (13) SCC 340. He would further emphasize that there has been arbitrariness in the matter and the order of the Tribunal be upheld. The learned Advocate General, in response, would draw our attention to the following pleadings in the application before the Tribunal:-

“4(14) The petitioners were given regular promotions against the vacant posts of Commercial Tax Officer Grade-2 vide G.O. dated 27 August 2010 against the selection year 2003-2004. A copy of this G.O. is Annexure No. A-10. This also establishes the fact that the promotional posts of departmental quota were available in 2003-2004 but promotions were delayed.

4(15) The petitioners are filing a copy of OM dated 28 April 2009 as Annexure No. A-11 which shows that 71 posts of Commercial Tax Officer Grade-2 were filled by direct recruitment on the result of Uttarakhand Combined Competitive Examination 2004. This shows that these posts had been referred to an advertised by the Commission in 2003-2004.”

He would also stress that the ad hoc promotion was effected without consultation with the Public Service Commission and, therefore, it is in the teeth of the statutory rules and no store can be laid by the ad hoc promotion and the service rendered thereunder.

9. Shri Manoj Tiwari, learned senior counsel would submit that no reliance can be placed on the reference in the order of appointment to the year of the vacancies, as was done by the



learned counsel for the applicants and in terms of Rule 8 of the Uttarakhand Government Servants Determination of Seniority Rules, 2002, which, in fact, corresponds to Rule 22 of the 1983 Rules, which was adverted to by Shri Quddusi, there is no retrospective date as such to the promotions given to the applicants. He would further point out that the Tribunal has, in fact, relied on the judgment of this Court and he would submit that this is distinguishable. He would refer to the subsequent decision of the Hon'ble Supreme Court and in the light of the judgment of the Hon'ble Supreme Court, reported in 2007 (1) SCC 683, the question is to be answered in terms thereof. Shri Quddusi, learned counsel for the applicants, in fact, again drew our attention to Rule 17 of the Uttar Pradesh Trade Tax Officers (Grade II) Service Rules, 1983 (hereinafter referred to as 'the 1983 Rules') and he would point out that there must be a combined seniority list. The learned Advocate General, thereupon, joins issue with him and points out the distinction between recruitment year and selection year. According to him, there are different recruitment years in this case and, therefore, there is no scope of applying the said rule at all.

10. Admittedly, the applicants have been given ad hoc promotions ahead of the substantive appointment. After the substantive appointment, a seniority list was prepared provisionally. Objections to the applicants were unsuccessful. Against the final seniority list issued on 01.03.2011, the petition was filed before the Tribunal in June 2011. We have noticed the prayers sought for by the applicants. We notice that there is no prayer sought to quash the seniority list to the extent it went against the applicants, but then we notice that there is reference in the original application to the seniority list being illegal. Para 4(19) and Para 4 (20) of the application read as follows:-

“4 (19)The Commissioner, Tax Uttarakhand vide his OM dated 01.03.2011 disposed off the objections received against the provisional seniority list and circulated the



final seniority list in which the direct recruits have been given seniority with effect from the Selection year 2004 though appointed by Govt. order dated 28 April 2009 and joined later thereafter completing necessary formalities and the petitioners have been placed below them although their selection year has also been shown 2003-2004 and they had been working as Commercial Tax Officer, Grade-2 from 2007 continuously and they ought to have been promoted on 28.12.2004 when their junior Shri Brij Lal (who has since retired) had been promoted.

4 (20) Thus the final seniority list is being challenged as impugned order (Annexure No.1) by the petitioners whose legitimate rights have been curtailed to provide undue advantage to the direct recruits in seniority in violation of Rule 8 of the Govt. Servants Seniority Rules 2002 and objections have been disposed off cursorily.”

11. Even though in the grounds it is stated that the seniority list is being challenged in the relief portion absolutely no relief as such was sought to quash the seniority list, but we notice that they have sought to have the seniority fixed from the date of entry. In fact, on the said ground itself, the applications could have been dismissed. but we will nonetheless not proceed to rest our decision on the said basis alone. We will proceed to examine the case on merits in view of the facts mentioned as contended by the learned counsel for the applicants.

12. The service in question is governed by statutory rules, that is to say ‘the 1983 Rules’. Rule 3 (l) of the 1983 Rules defines year of ‘substantive appointment’. It reads as under :-

3(l) “Substantive appointment” means an appointment, not being an ad hoc appointment, on a post in the Cadre of the Service made after selection in accordance with the rules and, if there are no rules in accordance with the procedure prescribed for the time being by executive instructions, issued by the Government.”



Rule 3 (o) defines 'year of recruitment', which reads as follows:-

“3 (o) 'Year of recruitment' means a period of twelve months commencing from the first day of July of calendar year.”

Rule 5 of the 1983 Rules provides for recruitment for the post of Trade Tax Officer (Grade-II), which was later redesignated as Commercial Tax Officer, which is made from two sources, namely, direct recruitment through Commission and by promotion, which also is to be made in consultation with the Commission. Thereafter Part V of the 1983 Rules provides 'procedure for recruitment'. Rule 14 of the said Rules reads as follows :-

“14. The appointing authority shall determine and intimate to the Commission the number of vacancies to be filled during the course of the year as also the number of vacancies to be reserved for candidates belonging to the Schedule Castes, Scheduled Tribes and other categories under rule 6.”

Rule 15 of the 1983 Rules provides for procedure for direct recruitment. It reads as under :-

“15. (1) Applications for permission to appear in the competitive examination for direct recruitment shall be called by the Commission in the prescribed form which may be obtained from the Secretary to the Commission.

(2) No candidate shall be admitted to the examination have been received and tabulated, the Commission shall, having regard to the need for securing due representation of the candidates belonging to the Schedule Castes, Scheduled Tribes and others under rule 6, summon for interview such number of candidates as, on the result of the written examination, have come upto the standard fixed by the Commission in this respect. The marks awarded to each candidate at the interview shall be added to the marks obtained by him in the written examination.

(3) The Commission shall prepare a list of candidates in order of their proficiency as disclosed by the aggregate of marks obtained by each candidate at the written examination and interview and recommend such number of candidates as they consider fit for appointment. If two or more candidates obtain equal marks in aggregate the name of the candidate obtaining higher marks in the written examination shall be



placed higher in the list. The number of names in the list shall be larger (but not larger by more than 25%) than the number of vacancies. The Commission shall forward the list to the appointing authority.

Note: The syllabus and rules for competitive examination shall be as indicated in Appendix 'A' which may be amended by the Government in consultation with the Commission as and when it may be found necessary."

Rule 16 provides for procedure for recruitment by promotion, which reads as follows:-

"16. Recruitment by promotion shall be made on the basis of merit, in accordance with the Uttar Pradesh Promotion by Selection in Consultation with Public Service Commission (Procedure) Rules, 1970 as amended from time to time."

Rule 17 provides for combined selection list for direct recruitment, which reads as follows :-

"17. If in any year of recruitment appointments are made both by direct recruitment and by promotion, a combined select list shall be prepared by taking the names of candidates from the relevant lists in such manner that the prescribed percentages are maintained the first name being from the list prepared under rule 16."

Part VI of the 1983 Rules provides for appointment, probation, confirmation and seniority which reads as follows:-

"Appointment:

18. (1) On the occurrence of substantive vacancies, the appointing authority shall make appointment by taking candidates in the order in which they stand in the list prepared under rule 13, 16 or 17 as the case may be.

(2) When in any year or recruitment, appointments are to be made both by direct recruitment and by promotion, regular appointments shall not be made unless selection are made from both the source and a combined list is prepared in accordance with rule 17.

(3) If more than one orders of appointment are issued in respects of any one selection, a combined order shall also be issued mentioning the names of the persons in order of seniority as determined in the



selection or, as the case may be, as it stood in the cadre from which they are promoted. If the appointments are made both by direct recruitment and by promotion, names shall be arranged in accordance with the cyclic order referred to in rule 17.

(4) The appointing authority may make appointments in temporary or officiating capacity also from the list referred to in sub-rule (1) if no candidate borne on these lists is available, he may make appointment in such vacancy from amongst persons eligible for appointment under these rules. Such appointments shall not last for a period exceeding one year or beyond the next selection under these rules whichever be earlier, and the provisions of regulations 5 (a) of the U.P. Public Service Commission (Limitation of Functions) Regulations, 1954 shall apply.

Probation :

19.(1) A person on appointment to the service in or against a permanent vacancy shall be placed on probation for a period of two years.

(2) The appointing authority may, for a reason to be recorded, extend the period of probation in individual cases specifying the date upto which the extension is granted:

Provided that save in exceptional circumstances the period of probation shall not be extended beyond one year and, in no circumstances, beyond two years.

(3) If it appears to the appointing authority at any time during or at the end of the period of probation or extended period of probation that a probationer has not made sufficient use of his opportunities and has otherwise failed to give satisfaction, he may be reverted to his substantive post, if any, and if he does not hold a lien on any post his services may be dispensed with.

(4) A probationer, who is reverted or whose services are dispensed with under sub-rule (3) shall not be entitled to any compensation.

(5) The appointing authority may allow continuous service, rendered in an officiation or temporary capacity in a post included in the cadre or any other equivalent or higher post to be taken into account for the purpose of computing the period of probation.



Training and departmental examination:

20. During the period of probation, all candidates recruited directly after the commencement of these rules shall be required to pass the departmental examination and to undergo such training and take such examination as may be prescribed.

Confirmation:

21. A probationer shall be confirmed to his appointment at the end of the period of probation or the extended period of probation if-

- (a) he has passed the prescribed departmental examination;
- (b) he has successfully undergone the prescribed training;
- (c) his work and conduct are reported to satisfactory;
- (d) his integrity is certified; and
- (e) the appointing authority is satisfied that he is otherwise fit for confirmation."

13. Then, we pass on to Rule 22 of the 1983 Rules, which is the most crucial provision, in our view, as it provides for determination of seniority. It reads as follows:-

"22. Except as hereinafter provided, the seniority of persons in any category of post shall be determined from the date of the order or substantive appointment and if two or more persons are appointed together by the order in which their names arranged in the appointment order:

Provided that if the appointment order specifies a particular back date with effect from which a person is substantively appointed and, in other cases, it will mean the date of issue of the order:

Provided further that, if more than one order of appointment are issued in respect of any one selection the seniority shall be as mentioned in the combined order of appointment issued under sub-rule (3) of rule 18.

(2) The seniority inter-se of persons appointed directly on the result of any one selection, shall be the same as determined by the Commission or, as the case may be, by the Selection Committee:

Provided that a candidate recruited directly may lose his seniority if he fails to join without valid reasons when vacancy is offered to him. The decision of the appointing authority as to the validity of reason shall be final.



(3) The seniority inter-se of persons appointed by promotion shall be the same as it was in the cadre from which they were promoted.

(4) Where appointments are made both by promotion and direct recruitment or from more than one source and the respective quota of the sources is prescribed, the inter-se seniority shall be determined by arranging the names in a cyclic order, in a combined list, prepared in accordance with rule 17, in such manner that the prescribed percentage is maintained:

Provided that:

- (i) Where appointments from any source are made in excess of the prescribed quota, the persons appointed in excess of quota shall be pushed down for seniority, to subsequent year or years in which there are vacancies in accordance with the quota.
- (ii) Where appointments from any source fall short of the prescribed quota and appointments against such unfilled vacancies are made in subsequent year or years, the persons so appointed shall not get seniority of any earlier year but shall get the seniority of the year in which their appointments are made, so, however, that in the combined list of that year, to be prepared under this rule, their names shall be placed at the top followed by the names, in the cyclic order of the other appointees.
- (iii) Where, in accordance with the rules or prescribed procedure, the unfilled vacancies from any source could, in the circumstances mentioned in the relevant rule or procedure be filled from the other source and appointments in excess of quota are so made, the persons so appointed shall get the seniority of that very year as if they are appointed against the vacancies at their quota."

14. It is beyond question where there is a question relating to seniority it must be decided with reference to statutory provisions. In this case, we do have statutory provisions in the form of the Rules which we have adverted to. No doubt, we must also advert to the Uttaranchal Promotion by Selection in Consultation with Public Service Commission (Procedure) Rules, 2003. Therein,



reference is made by the learned counsel for the applicants to Rule 4 (f) and 13, which we have already quoted.

Learned counsel for the applicants also refers to Rule 16 of the said 2003 Rules, which reads as follows:-

16. Candidates included in the select list shall be appointed against vacancies as notified to the Commission under rule 9, in the order in which their names appear in the list as re-arranged under rule 15:

Provided that if it appears to the appointing authority at any time during the period of probation that a Government servant appointed substantively vacancy has failed to give satisfaction, it may without assigning any reason revert him to the post from which he was promoted:

Provided further that the selected list of a year of recruitment shall be utilised only for vacancies of that year of recruitment.”

15. We may advert to the Uttaranchal Government Servants Seniority Rules, 2002. Therein, also substantive appointment is defined in Rule 4(h), which reads as follows:-

“4(h) “substantive appointment” means an appointment not being an ad hoc appointment, on a post in the cadre of the service, made after selection in accordance with the service rules relating to that service the service rules relating to that service.”

16. There is also reference to Rule 8 (1) of the Uttaranchal Government Servants Seniority Rules, 2002, which is also referred to by Shri Manoj Tiwari, learned senior counsel. It reads as follows:-

“8. Seniority where appointments by promotion only from and direct recruitment.-

- (1) Where according to the service rules appointments are made both by promotion and by direct recruitment, the seniority of persons appointed shall, subject to the provisions of the following sub-rules, be determined from the date of the order of their substantive appointments and if two or more persons are appointed together in the order



in which their names are arranged in the appointment order;

Provided that if the appointment order specified a particular back date, with effect from which a person is substantively appointed, that date will be deemed to be the date of order of substantive appointment and, in other cases, it will mean the date of order.

Provided further that a candidate recruited directly may lose his seniority, if he fails to join without valid reasons, when vacancy is offered to him the decision of the appointing authority as to the validity of reasons, shall be final.”

17. The first thing we must do in terms of the rules, which we have adverted to is what is the date of the order of substantive appointment. The order of substantive appointment of the applicants is dated 27.08.2010. The applicants before the Tribunal are in serial Nos. 5 & 6. Their selection year is, undoubtedly, shown as 2003-2004, but there is nothing in the order to indicate that in terms of either proviso to Rule 8 of the Uttaranchal Government Servants Seniority Rules 2002, or in terms of proviso to Rule 22 of the 1983 Rules that the promotion has been given with reference to an anterior date. We are of the view that therefore mere reference to the selection year in the order of appointment would not suffice and it cannot be treated as a case where the proviso either under Rule 8 of the aforesaid seniority rules, or the 1983 Rules would become applicable. The result would be that the order of substantive appointment within the meaning of the 1983 Rules would be taken as 27th August, 2010. The inevitable result of arriving at this conclusion would be that in terms of Rule 22 the seniority of the applicants would be decided with reference to the said date. We are of the clear view that in the conspectus of the statutory Rules available the Tribunal has committed an illegality in proceeding to lay down the principle that in the matter of



determining seniority reliance could be placed on ad hoc service also.

18. We would think that there are even other insuperable obstacles in the path of the applicants claiming the benefit of ad hoc service for reckoning the seniority. In the first place, we notice that the applicants when they were given ad hoc promotions in the year 2007 were not given such promotions after consultation with the Public Service Commission, which was the requirement under the Rules. Therefore, this was a case of an ad hoc promotion which was given *de hors* the statutory rules. On this short ground itself, no benefit could have been derived in the form of a claim for seniority with reference to an earlier date on the basis of the ad hoc promotion. That apart, as we have already noted, seniority is a principle which is to be determined with reference to Rule 22 which provides unambiguously that seniority must be fixed with reference to the date of substantive appointment. Substantive appointment, in turn, has been expressly defined in Rule 3(1) of the 1983 Rules to exclude ad hoc appointments.

19. We must now proceed to examine the case law which has been cited before us. In 1999 (1) SCC 280 (*Keshav Deo and another versus State of U.P. and others*), no doubt, the Hon'ble Apex Court has considered a case under U.P. Service of Engineers (Buildings and Roads Branch), Class II Rules, 1936. Therein, our attention was drawn to paragraph 14, which reads as follows :-

“14. Bearing the above principles in mind the facts of the case may be analysed. Undisputedly, the appellants possessed the requisite qualifications for the post of Assistant Engineer. Their promotions were within the quota prescribed for them as there was a sufficient number of vacancies reserved for promotees. They were selected by the Departmental Promotion Committee even for their ad hoc promotion. They were recommended by the Commission after some years but with reference to 1979. After such recommendation their promotions were confirmed with



effect from 30.5.1979. The impugned seniority list was prepared on that basis after the issue of directions by the High court in D.N. Saksena and V.K. Yadav. It goes without saying that the said seniority list is in accordance with the Rules and can not be disturbed. But unfortunately the High Court has upset that list on the ground that it violates the rule in 'P.D. Aggarwal.'(1987) 3 SCC 622."

We also notice that therein also Note 1 of Rule 23, which provides to seniority. It reads as follows:-

"Note 1. - Where the appointment order specifies a particular back date with effect from which a person is to be appointed substantively (on probation against a clear vacancy on a permanent post) that date will be deemed to be the date of order of substantive appointment In other cases it will mean the date of issue of the order."

20. We, however, notice that that is a case where the promotees were promoted on ad hoc basis by DPC, but they were recommended by the Commission after some years with reference to 1979. Their promotions were confirmed with effect from 1979. Apparently, the Court was having in mind to Note 1 and it would have been a case where the appointment was made with reference to a particular prior date. We would think that therefore the said decision is distinguishable in view of the fact finding we have already made. In that case, we also notice from the rules which were made available, there is no definition of the words "substantive appointment" as we have in these rules. No doubt, learned counsel for the applicants would point out that the words "member of the service" are defined under Rule 3(j) of the 1983 Rules as follows :-

"3(j) "member of the service" means a person substantively appointed under these rules or the rules or order in force prior to the commencement of these rules, to a post in cadre of the Service."

But we would think that this is a case where the words "substantive appointment" has been specifically defined to exclude ad hoc service and seniority is premised on the date of the substantive



appointment. We have already noticed the proviso which enable an appointment to be made expressly with reference to a retrospective date. We notice the absence of any such date in the orders appointing the applicants in this case. Therefore, we must think that the appointments of the applicants were made substantively in August 2010 only and, therefore, the said decision is clearly distinguishable.

21. Then, we pass on the consideration of a Bench decision of this Court in Writ Petition (S/B) No. 42 of 2007 (*Rakesh Kumar Uniyal versus Public Service Tribunal and others*), decided on 01.08.2012. That is a case, no doubt, where the Tribunal has granted the relief of seniority with reference to an earlier date of ad hoc appointment. That was challenged by the employer. Salary however, payable for higher post was not given. That was challenged by the employee. Both petitions came to be decided by a common judgment. There was, in fact, a circular involved in that case, which provided for seniority to be determined with reference to the date on which the higher pay was enjoyed by the employee but we must acknowledge that in Paragraph 9, which incidentally has been relied on by the Tribunal, it has been held as follows :-

“9. At the same time, the decision of the Government of Uttar Pradesh contained in the Circular of 1990 can only be treated as prospective. It could not be treated in respect of people who have already been asked to discharge duties of a superior post. It has been declared by the Hon’ble Supreme Court that in case, a person has been asked to discharge duties of a superior post and later he is confirmed or promoted regularly in that superior post and permitted to work in that post uninterruptedly from the date of his initial appointment until the date he has been appointed permanently in the said post, the person concerned shall be entitled to count his seniority from the date he was first asked to discharge the duties of the superior post. The conclusion, therefore, would be, having regard to the facts and circumstances of the case, that the order of the Tribunal cannot be sustained. The same must go, but at the same time, Sri Uniyal will be entitled to count his seniority in the post of Assistant Engineer with effect from 5th December,



1985, inasmuch as, undisputedly he had been permitted to discharge the duties attached to the said post uninterruptedly until he was permanently promoted to the said post on 8th February, 2000.”

Here we must notice that the Court has proceeded to specifically refer to a circular as applicable to the facts of the case. It is also found that there is no statutory rule, which governs the situation. It is, thereafter, that the Court proceeded to hold what it has held in paragraph 9 above.

22. There is no reference to any particular judgment of the Apex Court as such. We have noticed that the question of seniority must be determined with reference to the specific rules applicable to any service. There cannot be a general principle *de hors* the rules.

23. We would think that the issue at hand has been considered by the Apex Court in its judgment, reported in (2007) 1 SCC 683 (*State of Uttarakhand and another versus Dinesh Kumar Sharma*). Paragraphs 12, 24, 28, 34, 35 and 36 of the same read as follows :-

“12. After a perusal of the facts involved here, we feel that the issues that need to be addressed by us in this case are:

(i) Whether the respondent has the right to claim promotion and seniority from 1995-96 when the vacancy arose or whether his seniority will be reckoned from the date of substantive appointment which is in the year 1999.

(ii) Whether the High Court was justified in overlooking and ignoring the provisions of the U.P. Government Servants Seniority Rules, 1991 and grant a relief in favour of the respondents.

24. With regard to the issue as to whether the respondent has the right to claim promotion and seniority from 1995-96 when the vacancy arose or whether seniority will be reckoned from the date of substantive appointment which is 1999, it can be observed that an employee will be considered member of a cadre from the date of his/her substantive appointment in the cadre after selection.



28. It is clear from the above that a person appointed on promotion shall not get seniority of any earlier year but shall get the seniority of the year in which his/her appointment is made. Therefore, in the present fact situation the respondent cannot claim promotion from the date of occurrence of the vacancy which is 1995-96 but can only get promotion and seniority from the time he has been substantively appointed i.e. from 1999. Likewise, the seniority also will be counted against the promotion/appointment in the cadre from the date of issuance of order of substantive appointment in the said cadre i.e. from 19-11-1999.

34. Another issue that deserves consideration is whether the year in which the vacancy accrues can have any relevance for the purpose of determining the seniority irrespective of the fact when the persons are recruited. Here the respondent's contention is that since the vacancy arose in 1995-96 he should be given promotion and seniority from that year and not from 1999, when his actual appointment letter was issued by the appellant. This cannot be allowed as no retrospective effect can be given to the order of appointment order under the Rules nor is such contention reasonable to normal parlance. This was the view taken by this Court in *Jagdish Ch. Patnaik v. State of Orissa*, (1998) 4 SCC 456."

35. Coming to the question whether the High Court was justified in overlooking and ignoring the provisions of the U.P. Government Servants Seniority Rules, 1991 and grant a relief in favour of the respondent, it will be helpful to reproduce the High Court's order:

"From the perusal of the aforesaid order, it is clear that the authority has not applied its mind on the facts of the case as stated by the petitioner, in the representation, and has rejected the representation on the ground that since the appointment letter was issued to the petitioner on 19-11-1999, therefore, he is entitled to his seniority from that date. Even if the recruitment year is changed the order of appointment cannot be made with retrospective effect. The authority has failed to appreciate that if the fact of vacancy being accrued in the recruitment year 1995-96 i.e. on 1-5-1996 and second vacancy on 1-6-1996 had come to the knowledge of the Commission, the Commission could have given the promotion to the petitioner w.e.f. these dates, as the petitioner was entitled to the same and the Commission has found him suitable, which is evident from the promotion



order dated 19-11-1999. Therefore, this could have consequently affected the consequential benefits available to the petitioner had his promotion being made w.e.f. the date of promotion or falling of vacancy. Therefore, the order dated 1-10-2002 suffers from non-application of mind and is hereby liable to be ignored.

The fact that the vacancies had fallen on 1-5-1996 and 1-6-1996 in the recruitment year 1995-96 is not disputed by the respondents. The petitioner cannot be made to suffer on account of delay in recommendation by the Director of Agriculture for promotion of the petitioner. The petitioner cannot be held responsible and cannot be made to suffer as such became entitled to be considered for promotion on 1-5-1996. Therefore, the Government is directed to reconsider the matter and send it back to the Commissioner for appropriate orders suitable in the facts and circumstances of the case. Subject to the above, the writ petition is disposed of finally.”

36. This observation of the High Court in our view is erroneous. The High Court while observing that, “*the appellants rejected the representation of the respondent on the ground that since the appointment letter was issued to the respondent on 19-11-1999, he is entitled to his seniority from that date. The authority has failed to appreciate that if the fact of vacancy being accrued in the recruitment year 1995-96 i.e. on 1-5-1996 and second vacancy on 1-6-1996 had come to the knowledge of the Commission, the Commission could have given the promotion to the petitioner w.e.f. these dates, as the petitioner was entitled to the same and the Commission has found him suitable, which is evident from the promotion order dated 19-11-1999*”, has committed an error in understanding and appreciating Rules 17 and 21 of the Uttar Pradesh Agriculture Group ‘B’ Service Rules, 1995 and Rule 8 of the U.P. Government Servants Seniority Rules, 1991, which categorically state that the date of “substantive appointment” will be the date that shall be taken for determining promotion, seniority and other benefits.”

24. The learned Advocate General also referred to a judgment of the Hon’ble Apex Court, reported in (1996) 7 SCC 759, (*V.P. Srivastava and others versus State of M.P. and others*) paragraphs 6, 8, 9 & 10 of which read as follows:-



“6. Mr. P.P. Rao, the learned Senior Counsel appearing for the appellants, raises two contentions in assailing the legality of the order of the Tribunal:

(1) In view of the admitted position that the appellants — direct recruits were appointed in accordance with the Recruitment Rules, 1965 and the respondents-promotees were appointed on promotion on ad hoc basis not in accordance with the procedure prescribed for promotion under the 1965 Recruitment Rules, the Tribunal erred in law in declaring the promotees to be senior to the direct recruits solely on the ground that the promotees were appointed on 27-9-1980 whereas the direct recruits were appointed on 29-9-1980.

(2) Since the very principle of determination of inter se seniority adopted by the State Government was challenged, the only necessary party is the State itself and not the affected party and therefore non-inclusion of affected party will not be fatal to the case. At any rate when some of the promotee appointees have been impleaded as parties and the Tribunal itself came to the conclusion that they successfully safeguarded the interest of the promotees, the appellants could not have been refused relief on that score. On the question of delay and laches, Mr Rao contends that the appellants do not challenge the so-called ad hoc appointments of the respondents by way of promotion but they merely challenge the position assigned to them in the selection list and the selection list having been finalised only in the year 1988, on 23-12-1988, the appellants’ application before the Tribunal in 1989 by no stretch of imagination can be held to be barred on the principle of delay and laches.

8. We are unable to accept the request made by the learned counsel appearing for the respondents and in our considered opinion all the contentions raised by Mr. Rao, learned counsel appearing for the appellants, must succeed.

9. In the *Direct Recruits case* (1990) 2 SCC 715) the Constitution Bench of this Court summarised the legal position as follows: (SCC p. 745, para 47)

“(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and



made as a stopgap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.”

10. We are not concerned with the other propositions laid down by this Court in the present case. In the case in hand the initial appointment of the respondents on promotion not having been made following the procedure laid down by the Recruitment Rules of 1965 and even though they are continuing in the post uninterruptedly but the Public Service Commission having not approved their appointments as yet, proposition B above will have no application. Consequently applying proposition A above, the appellants-direct recruits must be held senior to the respondents — private respondents — ad hoc promotees. The Tribunal obviously erred in law in not following the aforesaid authoritative pronouncement of this Court for determination of the inter se seniority between direct recruits and the promotees.”

25. We notice that the Tribunal has in the order relied on an another judgment, wherein, in fact, we notice that the appointment where the Apex Court has adumbrated on the principle that where ad hoc promotions were made in accordance with rules, it could be counted for the purposes of seniority. We have already noticed that the said judgment could not have been applied by the Tribunal to the facts of this case, as here is the case where even the ad hoc promotion was made *de hors* the rules. So, this is a case where the Tribunal ought not to have found that the ad hoc service should be counted for the purposes of seniority in the light of the rules applicable and also the principle of law laid down by the Apex Court in the case law which was apposite to the facts.

26. We are not impressed by the reference to either Rule 16 or Rule 17 of the 1983 Rules as made by Shri Quddusi. This is in view of the pointed questions which arose for consideration which was the question relating to seniority and the applicants



having been given orders of promotions as noticed. We may incidentally also notice that the applicants did not even challenge the orders of promotions to the extent that they were not given retrospective dates in terms of the rules applicable and accepting the date 27.08.2010, as the date of substantive appointment, they could not possibly claim seniority with reference to ad hoc service.

27. At this juncture we must also notice that even proceeding for a moment that there was illegality committed in the form of the authorities not filling up the vacancies in consultation with the Public Service Commission and allowing their recruitment to take place, they should have approached the Court and sought appropriate relief. We are obliged to proceed to consider the matter with reference to statutory rules in terms of the orders of substantive appointment as also in the light of the prayers sought in the application before the Tribunal.

28. We are also not impressed by the contention based on Rule 18(2) of the 1983 Rules having regard to the subject matter of the litigation before the Tribunal and the relief sought.

29. In such circumstances, we are constrained to interfere with the orders of the Tribunal and all the three writ petitions will stand allowed. The impugned order will stand set aside. The original application filed by the applicants will stand dismissed. No order as to costs.

(V.K. Bist, J.)
25.06.2015

(K.M. Joseph, C.J.)
25.06.2015