

AFR

Reserved on 01.09.2021

Delivered on 01.10.2021

Court No. - 18

Case :- SERVICE SINGLE No. - 2306 of 2020

Petitioner :- Dhananjay Singh & Ors.

Respondent :- State Of U.P.Thru Prin.Secy.Housing &Urban Planning & Ors.

Counsel for Petitioner :- Hemendra Pratap,Girijesh Kumar Dwivedi,Kshitij Mishra

Counsel for Respondent :- C.S.C.,Ram Raj,Rishabh Raj

Hon'ble Dinesh Kumar Singh,J.

1. Present writ petition under Article 226 of the Constitution of India has been filed impugning seniority list dated 02.01.2020, wherein the petitioners have been placed below the private respondents.
2. The petitioners are working as Junior Engineer (Civil) and their services are governed under The Uttar Pradesh Development Authorities Centralized Services Rules, 1985 (hereinafter referred to as 'Rules of 1985') framed under Uttar Pradesh Urban Planning and Development Act, 1973 (hereinafter referred to as 'Act of 1973') by an amendment brought in on 27.04.1985, which empowered the State Government to create centralized services for all the development authorities of the State.
3. In exercise of the powers conferred under Sub-Section 5A of the Act of 1973, Rules of 1985 were enacted. These Rules were enforced with effect from 25.06.1985. The petitioners were appointed on 23.11.1984 on temporary basis on the posts of Junior Engineer (Civil) at Kanpur Development Authority by the said development authority.

4. It appears that the State Government had issued orders/directives to all Chairman, Development Authorities and Vice Chairman of the Development Authorities vide Government Orders dated 02.01.1983 and 09.03.1983 whereby it was directed that no appointment in Uttar Pradesh Palika (Centralized) Cadre would be made without prior sanction of the Government. These two government orders have been placed on record with the counter affidavit as Annexures CA-1 and CA-2.

5. From the reading of the aforesaid two government orders, it is clear that the appointment of the petitioners was made without prior permission of the State Government and same should be treated illegal.

6. Further, vide Government Order dated 17.12.1984, placed on record with the counter affidavit as Annexure-CA-5, which was addressed to all the development authorities whereby it was directed and made clear that vide Ordinance dated 22.10.1984, Uttar Pradesh Development Authorities (Centralized) Services had been created and despite clear directives issued by the Government for not making appointments, promotion, regularization and transfer or creation of the posts, some development authorities were still making appointments etc. It was further said that in past the government orders had been issued on 09.03.1983 and 16.04.1984 in this respect and, it was expected from the development authorities that they would strictly adhere to the directives issued in the State Government order.

7. Further, it was brought to the notice of the Government that some development authorities before issuance of the Ordinance on 22.10.1984 and, thereafter also have made appointments etc. Therefore, it was directed by the Hon'ble Governor in exercise of the powers under Section 4 of Act of 1973 that any appointment etc. made after 09.03.1983 without prior sanction of the Government in

respect of the posts created vide Ordinance dated 22.10.1984 would be treated to be void ab initio and, in future appointments would be made only in accordance with the provisions of centralized services rules which were being promulgated shortly.

8. After promulgation of Rules of 1985, applications were invited for direct appointment on the posts of Junior Engineer (Civil) and advertisements were issued in April and May, 1986. The petitioners as well as private respondents applied in pursuance of the said advertisements. The petitioners and private respondents were selected by the selection committee duly constituted under the Rules and were recommended for appointment on the posts of Junior Engineer (Civil). The State Government vide office order dated 31.07.1986 had appointed the petitioners and private respondents on the posts of Junior Engineers (Civil) on purely temporary and ad hoc basis.

9. On 02.02.1992 by way of an amendment, Rule 20A was inserted in Rules of 1985 for facilitating regularization of ad-hoc appointments. Rule 20-A of Rules of 1985 provides that any person who was directly appointed on ad hoc basis on or after 01.10.1986 and was continuing in services on the date of commencement of the said Rules and possessed requisite qualifications prescribed under Rule 14 for regular appointment at the time of his ad-hoc appointment and, completed three years of continuous service, such a person would be considered for appointment against a permanent or temporary vacancy on the basis of his service record and suitability in accordance with the provisions contained in the said Rules.

10. For the purposes of regularization, the Government constituted a selection committee as per Rule 20-A (3) of Rules of 1985. Under Sub Rule 4 of Rules 20-A of Rules of 1985, eligibility list of candidate was prepared and their names were arranged according to their seniority as determined from the date of order of ad-hoc appointment issued by the State Government. The list was placed

before the Selection Committee. The Selection Committee prepared the list of selected candidate and forwarded the same to the State Government.

11. On the basis of recommendation of the Selection Committee, the State Government on 22.01.1997 granted approval for regularization of services of 176 Junior Engineers (Civil), which included the names of the petitioners and private respondents.

12. On 27.04.2000, the State Government issued a tentative seniority list of Junior Engineers (Civil), who had been regularly appointed after 22.10.1984, under the provisions of Rules, 1985 and, the said tentative seniority list of Junior Engineers (Civil) was finalized and, final seniority list was issued on 23.11.2007. The aforesaid seniority list was amended vide office memorandum dated 01.01.2009.

13. It was realised by the Government that in the seniority list dated 23.11.2007, several names of the Junior Engineers were left out and, there were several defects in the said seniority list and, several cases were filed in the Court against the said seniority list dated 23.11.2007. It was also realised that a separate cadre of Electrical/Mechanical (Junior Engineer) was carved out and, their separate seniority list was prepared on 12.03.2008 and, therefore, names of the Junior Engineers belonging to Electrical/Mechanical Branch were required to be removed from the seniority list dated 23.11.2007. Diploma Engineers Sangh also demanded for annulling the seniority list dated 23.11.2007 and, for preparing undisputed seniority list as per law. The Government after due deliberation came to the conclusion that there were several deficiencies in the seniority list dated 23.11.2007 of the Junior Engineers (Civil) and, therefore, decided to annul the said seniority list. This decision was taken in pursuance of the orders passed in some writ petitions by this Court.

14. Thus, a tentative seniority list of Junior Engineers, who were appointed after 22.10.1984, was prepared under Rule 7 read with Rule 28 of Rules of 1985. It was further said that the said seniority list would be read below the seniority list of the Junior Engineers (Civil) published on 19.04.1996. Objections were invited against the said seniority list dated 19.06.2014. The Government has issued final impugned seniority list dated 2.01.2020. In the impugned seniority list, the petitioners have been placed below the private respondents.

15. Heard Sri Sanjay Bhasin, learned Senior Counsel Assisted by Sri Hemendra Pratap and Vipul Shukla, Sri Ram Raj, Advocate assisted by Sri Rishabh Raj, learned counsel for the respondents No. 2 to 45 and Sri Ran Vijay Singh, learned Additional Chief Standing Counsel for the State respondents.

16. Mr. Sanjay Bhasin, learned Senior Advocate has submitted that the petitioners were appointed in pursuance of the advertisement dated 25.09.1984 by the Kanpur Development Authority. In the said advertisement, 8 posts of Assistant Engineer and 26 posts of Junior Engineer (Civil) were advertised. The petitioners after facing regular selection process were selected and given appointments on the post of Junior Engineer (Civil) vide appointment letter dated 23.11.1984 on temporary basis for a period up to 28.02.1985. They have been continuously working since then without any break.

17. It has been further submitted by learned Senior Advocate that by Ordinance No.10 of 1985, notified on 27.04.1985, Section 5-A was retrospectively incorporated in the Act of 1973. Section 5-A is an enabling provision for creation of Development Authorities Centralised Services. Section 5-A of the Act of 1973 provides for absorption of persons serving on posts included in such centralized services immediately before such creation. Sub-section 2(b) of Section 5-A provides for immediate provisional absorption, on creation of centralized services, if the incumbent is holding

temporary or officiating appointment. Sub-section 4 of Section 5-A of the Act of 1973 provides for examination of suitability of such incumbent absorbed provisionally.

18. In furtherance of Section 5-A of the Act of 1973, Rules of 1985 were notified on 25.06.1985, whereby centralized services were created for Development Authorities in the State. These services include post of Junior Engineer. It has been, therefore, submitted that the petitioners are deemed to have been provisionally absorbed on 25.06.1985 i.e. the date when the Rules of 1985 were published, however, subject to their suitability under Section 5-A(4) of the amending Act, 1985. Selection committee constituted in June, 1986 was only with respect to judging the suitability of junior engineers working in the Development Authorities. The petitioners were found suitable, however, instead of treating them to as absorbed, fresh appointments orders were issued on 31.06.1986 appointing the petitioners as well as private respondents on temporary and ad hoc basis.

19. It has been further submitted that after Rule 20-A was inserted on 10.02.1992 in the Rules of 1985 providing for regularization of ad-hoc employee pursuant thereof the petitioners and private respondents were regularized vide order dated 22.01.1997, however, the regularization order, which contains list of 176 incumbent, cannot be said to be a merit list inasmuch as prior to the regularization order dated 22.01.1997 neither any examination nor any interview was held to determine any competitive merit of the candidates, who are said to be regularized by the said order.

20. It has been further submitted by learned Senior Advocate that seniority of an employee has to be determined in accordance with the applicable rules inasmuch as seniority is a creation of a statute. Rules of 1985 provide for determination of seniority of provisionally absorbed incumbent and, as per Rule 7, it is to be determined on the

criteria of continuous length of service including services rendered in a Development Authority, Nagar Mahapalika/Palika or Improvement Trust.

21. Submission of the learned Senior Advocate is that since the petitioners have continuously been working with effect from 23.11.1984, their seniority is to be determined from the said date. However, in the impugned seniority list, the petitioners have been shown to be in service with effect from 31.07.1986, which is against spirit of Rule 7 of the Rules of 1985. Alternatively, it is submitted that even as per Section 5-A(2) of the Act of 1973, the petitioners are deemed to have been provisionally absorbed in centralized services on 25.06.1985, when the Rules of 1985 were notified.

22. It has also been submitted by learned Senior Advocate that Rule 28 of the Rules of 1985 relates to seniority with respect to incumbents not covered under deemed provisional absorption under Section 5-A(2) of the Act of 1973. Rule 28 of the Rules of 1985 provides for determination of seniority from the date of order of appointment. The petitioners were appointed on 23.11.1984, much before the private respondents came to be appointed and, therefore, they ought to have been placed above them.

23. On 19.04.1996, a final seniority list was issued of the incumbents (Junior Engineers), who had been working prior to 22.10.1984 i.e. the date when when Section 5-A was inserted in the Act of 1973 with retrospective effect. In the said seniority list also, date of first appointment was taken as a determinative factor for counting the seniority.

24. It has been further submitted that final seniority list dated 23.11.2007, amended on 01.01.2009, held the field from 2007 to 2014, ought not to have been altered or superseded by issuing tentative seniority in 19.06.2014. In the seniority list published on

23.11.2007, the petitioners were placed at Serial Nos.5, 6, 8, 11, 12 & 13 whereas in the impugned final seniority list, the petitioners have now been placed at Serial Nos.122, 123, 124, 125, 126, 127, 131, 138, 140, 141 & 142 showing their date of temporary/ad-hoc appointment as 31.07.1986.

25. It has been further submitted by learned Senior Advocate that 31.07.1986 is the date, when fresh appointment orders were issued to the petitioners pursuant to the directions of the State Government to test their suitability under Section 5 (2) (b) of the Act of 1973. However, their initial appointment remains 23.11.1984 and, therefore, counting petitioners' seniority treating their date of appointment as 27.06.1986, is wholly illegal and, liable to be quashed.

26. It has been further submitted that the petitioners' appointment made on 23.11.1984 was neither illegal nor void inasmuch as the appointments were made after written examination and interview and, their appointments continued till their regularization. They appeared in the examination held in the year 1986 and, fresh appointment orders were issued on 31.07.1986 under the deeming provisions of Section 5-A of the Act of 1973. Upon creation of the Centralized Services on 25.06.1985, the petitioners would be deemed to have been provisionally absorbed. The petitioners' date of appointment has always been treated to be 23.11.1985, which is evident from the seniority list dated 23.11.2007 as well as tentative seniority list dated 19.11.2014 and therefore, altering the date of appointment to be 21.07.1986 is incorrect and illegal and, the impugned seniority list is liable to be quashed.

27. It has been further submitted by learned Senior Advocate that long standing seniority should not be disturbed and unsettled. When the seniority list dated 23.11.2007 has held the field for so long, there was no justification for altering the said seniority and, to issue a fresh seniority list dated 02.01.2020.

28. Learned Senior Advocate in support of his submissions has placed reliance on the judgments in the cases of **H.S. Vankani & Ors vs State of Gujarat & Ors: 2010 (4) SCC 301** and **B.S. Bajwa & Anr vs State of Punjab & Ors: 1982(2) SCC 523** to submit that the question of seniority should not be reopened after a lapse of reasonable period of time because that results in disturbing the settled position, which is not justifiable.

29. Mr. Ran Vijay Singh, learned Additional Chief Standing Counsel appearing for the State opposing the writ petition has submitted that the State Government in exercise of powers conferred under Sections 5(2) and 41(1) of the Act of 1973, had issued Government Orders dated 02.01.1983, 09.03.1983 and 16.04.1984, which have been placed with the counter affidavit directing therein all the Divisional Commissioners/ Chairman/ Vice Chairman of all the Development Authorities of the State not to make any appointment without prior permission of the State Government, otherwise such appointment(s) would be treated as arbitrary, void and illegal.

30. Kanpur Development Authority vide appointment orders dated 23.11.1984 had temporarily appointed the petitioners in a Kanpur Nagar Vikas Project de hors the State Government policy and the Government Orders. Appointments of the petitioners were temporary appointment for a particular project and to last till 28.02.1985. It was also mentioned that the temporary appointments were to come to an end without assigning any reason and without any prior notice. Even, otherwise appointments of the petitioners after Government Order dated 09.03.1983 are to be treated void ab initio inasmuch as same were made without prior permission of the Government.

31. It has been further submitted by learned Addl. Chief Standing Counsel that since the Government in exercise of the powers conferred under Section 5 (2) and Section 41(1) of the Act of 1973 had completely prohibited the appointments by the Development

Authorities without prior permission of the State Government and, since the appointments of the petitioners were without prior sanction of the Government, their appointments were nullity and, no benefit of the services rendered on the basis of such void and illegal appointment could be extended to the petitioners.

32. After Rules of 1985 were notified on 25.06.1985, posts of Junior Engineer (Civil) are to be filled up through Uttar Pradesh Public Service Commission but as direct recruitment through the Public Service Commission would have taken longer time and, there was urgent need of junior engineers in Development Authorities, recruitment for the posts of Junior Engineer (Civil) was made under Rule 23 of the Rules, 1985 purely on temporary and ad-hoc basis by constituting the Selection Committee. The candidates were required to appear in the competitive examination and interview. The Selection Committee prepared a merit list on the basis of marks obtained in the written examination and interview. In the said selection, the petitioners and private respondents applied and participated in the selection process and, the State Government vide its office order dated 31.07.1986 appointed the petitioners and private respondents to the post of Junior Engineer on purely temporary and ad-hoc basis under Rule 23(4) of the Rules of 1985. In the merit list prepared by the Selection Committee, petitioner No.2 was placed at Serial No.49 according to his performance.

33. It has been further submitted that on 07.02.1992, Rule 20-A was inserted in Rules of 1985 by way of 3rd amendment to regularize the appointments and, accordingly eligibility list of the candidates was prepared and, their names were arranged accordingly to the seniority as determined from the date of order of ad-hoc appointment by the State Government and, the said list was placed before the Selection Committee. The Government on the basis of recommendation of the selection committee to regularize ad-hoc appointments, vide office

memorandum dated 22.01.1997 regularized the service of the petitioners and the private respondents with immediate effect. In the said regularization order, in which junior engineers were arranged in the order of seniority, private respondents were placed much senior to the petitioners and date of regularization i.e. 22.01.1997 is the date of appointment of the petitioners and private respondents. All the private respondents are senior to the petitioners as per Rule 28 of Rules of 1985. The petitioners as well as the private respondents represented first batch of Junior Engineers initially appointed purely on temporary and ad-hoc basis vide Government Order dated 31.07.1986 and, they have been given regular appointment only vide Government Order dated 22.01.1997 and, as per Rule 28 of the Rules of 1985, the petitioners are junior to the private respondents.

34. It has been further submitted that the Government realised that the seniority list dated 23.11.2007 was not properly prepared inasmuch as some names were not included and some names were not arranged in proper seniority. In view of the orders of the High Court and in contempt proceedings, several times the said seniority was amended. Separate cadre of Electrical/Mechanical Junior Engineer was formed and, their names were to be deleted from the seniority list. A demand was raised by the Diploma Engineers Sangh for annulling the seniority list dated 23.11.2007 and for preparing the seniority list in accordance with the Rules and, therefore, the said seniority list was annulled/cancelled vide Government Order dated 19.06.2014 and, after considering the objections, final seniority list dated 02.01.2020 has been prepared, which is in accordance with law and, the same is not liable to be interfered with.

35. Mr. Ram Raj, learned counsel appearing for the private respondents has submitted that impugned seniority list dated 02.01.2020 has been prepared and finalized as per the order of this Hon'ble Court dated 14.11.2019 passed in **Writ Petition**

No.29227(SS) of 2019: Dhananjay Singh & Ors vs State of U.P. & Ors, wherein a direction was issued to finalize the tentative seniority list and publish the final seniority list. Impugned seniority list has been prepared in accordance with Rules 20, 20-A and 23 of the Rules of 1985. Seniority has been assigned as per the provisions of Rule 28 of the Rules of 1985. Private respondents are senior to the petitioners as per select list and the regularization list.

36. In pursuance of the advertisement dated 30.04.1986 and 10.05.1986, the petitioners and private respondents had applied and appeared in written examination before the Selection Committee held between 29.06.1986 and 01.07.1986. The Selection Committee had prepared the select list as per Rule 23(4) of Rules of 1985. Private respondents were senior to the petitioners in the said merit list.

37. Learned counsel for the private respondents has further submitted that under Rule 20-A(9), a person appointed shall be entitled to seniority from the date of order of appointment. Even, in the regularization order dated 22.01.1997 whereby services of 176 Junior Engineers (Civil) including the petitioners and the private respondents, were regularized, the petitioners were placed junior to the respondents. The said seniority list was never challenged by the petitioners and had become final.

38. Learned counsel has further submitted that the seniority list dated 23.11.2007 was de hors the Rules and, it was never accepted. Several petitions were filed before this Court and, the Diploma Engineer Sangh had also represented against the seniority list before the Government to cancel the said seniority list dated 21.11.2007 and prepare fresh seniority list in accordance with the Rules.

39. Mr.Ram Raj, learned counsel appearing for private respondents has reiterated the submission of the learned Addl. Chief Standing Counsel that initial appointment of the petitioners dated 23.11.1984

was nullity and, no benefit can be conferred on them on the basis of such appointment, which was void ab initio. He has, therefore, submitted that it is incorrect to submit that the seniority list dated 23.11.2007 had settled seniority of the Junior Engineers.

40. Learned counsel for the private respondents has submitted that considering the objections to the seniority list dated 23.11.2007 and litigation before this Court as well as representation of the Diploma holders against the said seniority list, the Government decided to recast the seniority and cancel the said seniority list dated 23.11.2007 vide order dated 19.06.2014.

41. Learned counsel has further submitted that the seniority list has to be determined from the effective date of selection. When an employee is not having been born in the cadre, he cannot be given seniority from such a date.

42. Learned counsel has, therefore, submitted that impugned seniority list is in accordance with law, which has been finalized after considering all objections and, therefore, said seniority list does not require any interference by this Court in exercise of power of judicial review under Article 226 of the Constitution of India.

43. I have considered the submissions advanced on behalf of Mr. Sanjay Bhasin, learned Senior Advocate, Mr. Ran Vijay Singh, learned A.C.S.C. and Mr. Ram Raj, learned counsel appearing for the private respondents.

44. It is not in dispute that the initial appointment dated 23.11.1984 of the petitioners in Kanpur Development Authority was made de hors the Government Orders dated 02.01.1983, 09.03.1983 and 16.04.1984 issued in exercise of powers conferred under Rule 41(1) of Rules of 1985.

45. Section 5(2) and 41(1) of the Act, 1973 are extracted hereunder:

"5.Strength

(1)

(2) Until the Government determines the strength of posts as envisages under Sub-Rule(1) the posts in the service as existing on the ninth day of March, 1983 under the Development Authorities shall form the present strenght:

Provided that -

(i) the Government may leave unfilled or may hold in abeyance and vacant post, wi 31.07 thout thereby entitling any person to compensation; and

(ii) the Government may create such additional posts as it may consider necessary.

(3)....

41. Control by State Government.-

(1) The [Authority),the Chairman or the (Vice-Chairman] shall carry out such directions as may be issued to it from time to time by the State Government for the efficient administration of this Act.

.....

46. Thus, an authority is duty bound to carry out a direction issued by the State Government. Since initial appointments were de hors the Government directives issued in the Government Orders dated 02.01.1983, 09.03.1983 and 16.04.1984, which specifically provided that appointments, promotion, confirmation, absorption etc., made without prior sanction of the Government should be treated irregular and void.

47. As stated earlier, an amendment was brought in the Act of 1973 and Section 5-A was inserted empowering the State Government to create centralized services for all the development authorities.

48. Section 5A of the Act, 1973 reads as under:-

"5-A. Creation of Centralised Services:

(1) Notwithstanding anything to the contrary contained in Section 5 or in any other law for the time being in force, the State Government may at any time, by notification create one or more 'Development Authorities Centralised Services for such posts, other than the posts mentioned in Sub-Section (1) of Section 59, as the State Government may deem fit, common to all the Development Authorities, and may prescribe the manner and conditions of recruitment to and the terms and conditions of service of person appointed to such service.

(2) Upon creation of a Development Authorities Centralised Service, a person serving on the posts included in such service immediately before such creation, not being a person governed by the U.P. Palika (Centralized) Services Rules, 1966. or serving on deputation, shall, unless he opts otherwise, be absorbed in such service.-

(a) finally, if he was already confirmed in his post, and

(b) provisionally if he was holding temporary or officiating appointment.

(3) A person referred to in Sub-section (2) may, within three months¹ from the creation of such Development Authorities Centralised Service communicate to the Government in the Housing Department, his option not to be absorbed in such Centralised Service. failing which he shall be, deemed to have opted for final or provisional. as the case may be, absorption in such Centralised Service.

(4) Suitability of a person absorbed provisionally, for final absorption In a Development Authorities Centralised Service, shall be examined In the manner prescribed and if found suitable he shall be absorbed finally.

(5) The services of an employee who opts against absorption or who is not found suitable for final absorption, shall stand determined and he shall without prejudice to his claim to any leave, pension, provident fund or gratuity which he would have been entitled to, be entitled to receive as compensation from the Development Authority concerned, an amount equal to-

(a) three months' salary, if he was a permanent employee:

(b) one month's salary, if he was a temporary employee.

Explanation.-For the purposes of this sub-section the term salary includes dearness allowance, personal pay and special pay. if any.

(6) It shall be lawful for the State Government or any officer authorised by it in this behalf, to transfer any person holding any post a Development Authorities Centralised Service from one Development Authority to another.]"

49. Thus, on creation of development authorities centralized services, a person appointed and serving on the post included in the centralized services immediately before creation of the centralized services, was to be absorbed in such services provisionally, if he was holding temporary or officiating appointment. However, suitability of a person absorbed provisionally for final absorption in the development authorities centralized service was to be examined in the manner prescribed and, if found suitable, would be absorbed.

50. The question which calls for consideration is that whether an employee, whose appointment on a post included in the Centralized Services was void, could he be said to have been provisionally absorbed on coming into force on creation of the U.P. Development Authority Centralized Services.

51. Rule 7 of the Rules of 1985 provides for seniority of finally absorbed officers and other employees, which reads as under:-

"7. Seniority of finally absorbed officers and other Employees. -

(1) Notwithstanding anything in Rule 28 the seniority of such officers and other employees who are Finally absorbed in the service under sub-section (2) of Section 5-A of the Act shall be determined on die criterion of continuous length of service including the services rendered in a Development Authority, Nagar Mahapalika, Nagarpalika or Improvement Trust on similar posts.

(2) In the case of persons having equal continuous length of service the person older in age shall be senior and in case the age of such persons is same the person drawing higher pay shall be senior."

52. Rule 28 of the Rules of 1985 provides that seniority of persons to be appointed in the centralized services, which reads as under:-

"**28. Seniority.**- (1) Except as hereinafter provided, the seniority of persons in any category of post, shall be determined from the date of

order of appointment and if two or more persons are appointed together, by the order in which their names are arranged in the appointment order:

Provided 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 25.

(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 the Selection Committee, as the case may :

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 reasons 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) Notwithstanding anything in sub-rule (1) the *inter se* seniority of persons appointed by direct recruitment and by promotion shall be determined from the date of joining the service in the case of direct recruits and from the date of continuous officiation in the case of promotees and where the date of continuous officiation of promotee and the date of joining of the direct recruit is the same, the person appointed by promotion shall be treated as senior:

Provided that where appointments in any year of recruitment are made both by promotion and direct recruitment and the respective quota of the source is prescribed, the *inter se* seniority shall be determined by arranging the names in a combined list in accordance with Rule 17 in such manner that the prescribed percentage is maintained."

53. Thus, Rule 7 is in respect of determination of seniority of absorbed officers employees whereas Rule 28 is in respect of the employees, who are appointed in the centralized services or promoted. Rule 7 would applicable only when the appointment is regular and not void. If the appointment of a person in the development authority before creation of centralized services was void, his seniority cannot be determined under Rule 7 of the Rules of 1985.

54. After creation of U.P. Development Authorities Centralized Services, the advertisement was issued on 30.04.1986 for

appointment of Junior Engineer (Civil) on temporary basis in the development authorities. The petitioners and private respondents had applied in pursuance to the said advertisement. The advertisement was issued to meet urgent need of junior engineers in the various Development Authorities as the process through Uttar Pradesh Public Service Commission would have taken a longer time. The petitioners and private respondents appeared in written examination and faced interview and the Selection Committee prepared the list of successful candidates for appointment on the posts of Junior Engineer (Civil) on temporary basis. The State Government issued appointment orders as per the office memorandum dated 31.07.1986 on the recommendation of the Select Committee.

55. Rule 23 of the Rules of 1985 prescribes procedure for direct recruitment which reads as under:-

"23. Procedure for direct Recruitment. - (1) For the purpose of direct recruitment, there shall be constituted a Selection Committee comprising of-

(a) Secretary to Government, Uttar Pradesh, Urban Development Department or his nominee;

(b) Vice-Chairman of a Development Authority to be nominated by the Government;

(c) Technical Adviser nominated by the Government.

(2) The Selection Committee shall scrutinize the applications and require the eligible candidates to appear in a competitive examination and in interview.

Note. - The syllabus and procedure for competitive examination shall be such as may be specified by the Commission from time to time.

(3) After the marks obtained by the candidate in the written test have been tabulated, the Selection Committee shall, having regard to the need for securing the representation of the candidates belonging to Scheduled Castes, Scheduled Tribes and other categories in accordance with Rule 9, call for interview such number of candidates as, on the result of the written examination have come up to the standard fixed by the committee in this respect. The marks awarded to each candidate in the interview shall be added to marks obtained by him in the written test.

(4) The selection committee shall prepare a list of candidates in order of merit as disclosed by aggregate of marks obtained by him in the written test and interview. If two or more candidates obtain equal marks, the candidate obtaining higher marks in the written tests shall be placed higher. The number of the names in the list may be larger (but not larger by more than 25 per cent) than the number of the vacancies."

56. Thus, sub-Rule 4 of Rule 23 mandates the Selection Committee to prepare a list of successful candidates in order of seniority as disclosed by aggregate of marks obtained by them in written test and interview.

57. If the petitioners' initial appointment dated 23.11.1984 was valid, they were not required to undertake the selection process commenced with the advertisement dated 30.04.1986. The petitioners knew their appointment was void in view of the Government Orders dated 02.01.1983, 09.03.1983 and 16.04.1984 and, therefore, they appeared in the selection process and, were declared successful along with the private respondents. It is not in dispute that the petitioners' names were below the names of the private respondents in the select list prepared by the selection committee for their appointment on the post of Junior Engineer (Civil) on temporary/ad hoc basis.

58. After selection, the petitioners and private respondents continued to discharge their duties and responsibilities as Junior Engineer (Civil) with effect from 31.07.1986 and, the Government in order to regularize their services amended Rules of 1985 on 10.02.1992 inserting Rule 20-A which provided that any person who was directly appointed on ad-hoc basis on or before 01.10.1986 and was continuing in services, as such, on the date of commencement of the said amendment and possessed requisite qualifications for regular appointment and had completed three years of continuous service, was eligible for being considered for appointment in permanent vacancies.

59. As per Rule 20-A(3) of the Rules of 1985, the State Government was required to constitute a selection Committee for regularizing the ad-hoc appointments and, consultation with the Public Service Commission was dispensed with. In view of Rule 20-A of Rules of 1985, the Selection Committee was constituted for regularizing the services of the petitioners and other ad-hoc and temporary Junior Engineers (Civil). The eligibility list of the candidates was prepared under Sub-Rule 4 of Rule 20 of Rules of 1985 and, it was forwarded by the State Government to the Selection Committee for regularization.

60. Rule 20-A reads as under:-

"20A--Regularization of ad hoc appointment--

(1) Any person who:

(i) was directly appointed on ad hoc basis on or before October 1, 1986 and is continuing in service, as such on the date of commencement of these Rules ;

(ii) Possessed requisite qualifications prescribed under Rule 14 for regular appointment at the time of such ad hoc appointment, and

(iii) Has completed or, as the case may be, after he has completed three years' continuous service, shall be considered for appointment in permanent or temporary vacancy as may be available on the basis of his service record and suitability before any regular appointment is made in such vacancy in accordance with the provisions contained in these Rules.

(2) In making regular appointment under these Rules, reservation for the candidates belonging to the Scheduled Castes, Scheduled Tribes, Backward Classes and other categories shall be made in accordance with the orders of the Government in force at the time of recruitment.

(3) For the purpose of sub-rule (1), the Government shall constitute a selection committee and consultation with the commission shall not be necessary.

(4) An eligibility list of the candidates, shall be prepared and arranged the names of the candidates shall be order of seniority as determined from the date of order of their ad hoc appointment by the appointing authority and if two or more persons are appointed together, from the order in which their names are arranged in the said appointment order. The list shall be placed before the Selection

Committee along with their character rolls and such other service records pertaining to them, as may be considered necessary to judge their suitability.

(5) The Selection Committee shall consider the cases of the candidates on the basis of their records referred to in sub-rule (4).

(6) The Selection Committee shall prepare a list of selected candidates, the names in the list being arranged in order of seniority, and forward it to the Government.

(7) The Government shall, subject to the provisions of sub-rule (2) of this Rule, make appointment from the list prepared under sub-rule (6) of this Rule in order in which their names stand in the list.

(8) Appointment made under sub-rule (7) shall be deemed to be made under relevant provisions contained in Rule 25.

(9) A person appointed under this Rule shall be entitled to seniority only from the date of order of appointment after selection in accordance with this Rule and shall, in all cases, be placed below the persons appointed in accordance with the procedure for direct recruitment contained in Part V of these Rules prior to the appointment of such person under this Rule.

(10) If two or more persons are appointed together under this Rule, their seniority interse shall be determined in the order mentioned in the order of appointment.

(11) The services of a person, appointed on ad hoc basis who is not found suitable or whose case is not covered by sub-rule (1) of this rule shall be terminated forthwith and on such termination, he shall be entitled to receive one months' pay."

61. As per Rule 4 of Rule 20 of the Rules of 1985, eligibility list of the candidate was to be published and names were to be arranged in order of seniority to be counted from the date of order of ad-hoc appointment by the appointing authority.

62. In pursuance of the said list prepared by the State Government under Rule 20-A(4) of the Rules of 1985, the Selection Committee recommended for regularization of 176 Junior Engineers working on ad-hoc and temporary basis in various development authorities including the petitioners and private respondents. Vide office order dated 22.01.1997, the State Government issued order of appointment/ confirmation/ regularization of 176 Junior Engineers as provided

under Rule 25 of the Rules of 1985. In the said appointment/regularization/ confirmation order dated 22.1.1997, the petitioners were shown junior to the private respondents.

63. Submission of the learned counsel for the petitioners that under deeming provision of Section 5(A)(2) of the 1973 Act, the petitioners are deemed to have been absorbed in the centralized services subject to the judging of their suitability as per Section 5-A(4) does not hold water inasmuch as the petitioners' initial appointment was void ab initio and, therefore, they cannot be treated to have been absorbed.

64. I do not find any force in the submissions of learned Senior Counsel appearing for the petitioners that the petitioners appeared in the selection process in pursuance of the advertisement dated 30.04.1986 for judging their suitability under Section 5(A) (4). Advertisement was issued inviting applications for making fresh appointment on ad-hoc/temporary basis in all the Development Authorities. It was a fresh selection process, which commenced with the advertisement and culminated by order of appointments dated 31.07.1986. Therefore, no benefit can be conferred on the services rendered by the petitioners from their initial appointment dated 23.11.1984 till 31.07.1986. The petitioners had always been ranked junior to the private respondents in the select list on the basis of which appointment orders were issued on 31.07.1986 and, thereafter even in the regularization order dated 22.01.1997. First time the seniority was altered in the seniority list published in 23.11.2007, and that seniority list was disputed and, this Court had directed vide order dated 14.11.2019 passed in Writ Petition No.29227(SS) of 2009 to finalize the seniority list of Junior Engineers (Civil) of 2007, which was published tentatively on 19.06.2014 after annulling the seniority list of 2007.

65. I, therefore, hold that seniority list dated 02.01.2020 is in accordance with the Rule 23 read with Rule 25 of the Rules of 1985.

The petitioners cannot be given benefit of the services rendered by them from 23.11.1984 for counting their seniority inasmuch as their initial appointment was void and, the petitioners were aware of this fact otherwise, they would not have appeared in the selection process commenced with the advertisement dated 30.04.1986. Impugned seniority list has been prepared in accordance with the service rules.

66. The petitioners as well private respondents have entered into centralized services on 31.07.1986 and, they were substantively appointed on 22.01.1997 in the services. It is settled law that the date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from different sources. Any departure therefrom in the statutory rules, executive instructions or otherwise must be, (i) consistent with the requirements of Articles 14 and 16 of the Constitution, and (ii) must be expressly provided in the statute of the Rules. In case of ***Pawan Pratap Singh v. Reevan Singh, (2011) 3 SCC 267*** after making survey of several judgments, the Supreme Court cull down the legal position with regard to determination of the seniority as under:-

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

(i) The effective date of selection has to be understood in the context of the service rules under which the appointment is made. It may mean the date on which the process of selection starts with the issuance of advertisement or the factum of preparation of the select list, as the case may be.

(ii) Inter se seniority in a particular service has to be determined as per the service rules. The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from different sources. Any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.

(iii) Ordinarily, notional seniority may not be granted from the backdate and if it is done, it must be based on objective considerations and on a valid classification and must be traceable to the statutory rules.

(iv) The seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant service rules. It is so because seniority cannot be given on retrospective basis when an employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime."

67. The Supreme Court in the case of ***State of U.P. v. Ashok Kumar Srivastava, (2014) 14 SCC 720*** has again reiterated that the inter se seniority in a particular service has to be determined as per service rules. Date of entering in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from different sources. Any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.

68. It would be apt to extract para 24 of the aforesaid judgment:-

"24. The learned Senior Counsel for the appellants has drawn inspiration from the recent authority in *Pawan Pratap Singh v. Reevan Singh* [(2011) 3 SCC 267 : (2011) 1 SCC (L&S) 481] where the Court after referring to earlier authorities in the field has culled out certain principles out of which the following being the relevant are reproduced below: (SCC pp. 281-82, para 45)

"45. (ii) Inter se seniority in a particular service has to be determined as per the service rules. The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from different sources. Any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.

(iv) The seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant service rules. It is so because seniority cannot be given on retrospective basis when an employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime.”

69. It has been held in series of judgments that where initial appointment is only ad hoc and not according to the Rules and made as a stopgap arrangement, the officiation in such post cannot be taken into account for considering the seniority. (***Mohd. Israils v. State of W.B., (2002) 2 SCC 306***) (Para 7).

70. Rule 7 would operate whether appointments are made as per the service rules and appointments are not stop gap or purely ad-hoc as the case of the petitioners herein. The petitioners' initial appointment was de-hors the Government Orders and that was up to February, 1985. Thus, their services rendered before their appointment after selection in pursuance of the advertisement dated 30.04.1986 cannot be counted up to 31.07.1986. As their appointments were made without prior approval of the Government and in de hors the Government Orders which specifically provided that appointments made without prior approval of the Government would be void and illegal. Appointments of the petitioners dated 23.11.1984 were not made in compliance with the Government instructions and should be treated only for fortuitous. Therefore, they cannot claim any benefit of their appointment made on 23.11.1984 for counting their seniority treating it to be date of appointment.

71. In view of the aforesaid discussion, I find that the impugned seniority list has been prepared in accordance with the service rules and petitioners' claim for counting their seniority from the date of their appointment on 23.11.1984 is not sustainable and, therefore,

this Court does not find any ground to interfere with the impugned seniority list.

72. This writ petition thus, fails and is hereby *dismissed*. No Cost.

(Dinesh Kumar Singh, J.)

Order Date :- 01.10.2021

prateek