A.F.R.
Neutral Citation No. - 2025:AHC-LKO:41454-DB
Reserved

Case :- SPECIAL APPEAL No. - 120 of 2025

Appellant :- State Of U.P. Thru. Its Addl.Chief Secy./Prin. Secy. Secretariat Administration Deptt. Lko And Ors.
Respondent :- Shiv Datt Joshi And 21 Others
Counsel for Appellant :- C.S.C.
Counsel for Respondent :- Gaurav Mehrotra,Akhilesh Kumar Kalra,Rajesh Chandra Mishra,Ritika Singh

Alongwith

Case :- SPECIAL APPEAL No. - 122 of 2025

Appellant :- Mukesh Pradhan And Another
Respondent :- Sanjeev Kumar Sinha And 11 Others
Counsel for Appellant :- Meenakshi Singh Parihar
Counsel for Respondent :- Gaurav Mehrotra,C.S.C.

* * * * *

Hon'ble Arun Bhansali, C.J.
Hon'ble Jaspreet Singh, J.

(Per: Jaspreet Singh, J.)

1. In these two intra-court appeals, the dispute of seniority between the direct recruits and promotees of the Secretariat, Administration Department is in question. Two writ petitions were filed before the learned Single Judge by the promotees wherein they had challenged the orders impugned by which the date of appointment of the writ-petitioners was changed from 30.06.2016 to 13.07.2016 as well as the subsequent seniority list issued on 06.09.2023 wherein the writ petitioners were placed lower in seniority.

2. Since the issue involved in both the petitions was identical, hence, both the writ petitions were decided by a common judgment/order dated 24.02.2025 whereby the writ petitions were allowed and the order dated 09.08.2023, the seniority list dated 06.09.2023 and the consequential promotion order dated 25.10.2023 were set aside and the State-respondents was directed to prepare a fresh seniority list. The aforeasaid judgment and order dated 24.02.2025 corrected on 28.02.2025 passed in Writ-A No. 9193 of 2023 and Writ-A No. 5381 of 2024 has been put to challenge in the instant two intra-court appeals.

3. The State has preferred intra-court appeal No. 120 of 2025 which arises out of Writ-A No. 9193 of 2023. Sri Mukesh Pradhan and Mukesh Chandra Yadav, as appellants of the connected intra-court appeal no. 122 of 2025, who were the respondent nos. 5 and 7 respectively in Writ-A No. 5381 of 2024, too have assailed the same judgment and order dated 24.02.2025 corrected on 28.02.2025. Since the issue in both the appeals is common, hence, both the intra-court appeal are being decided by this common judgment.

4. Sri Kuldeep Pati Tripathi, learned Additional Advocate General and Sri Vivek Shukla, learned Additional Chief Standing Counsel for the State have challenged the order of the writ court urging that the order impugned does not take note of the relevant Service Rules. It was urged that the learned Single Judge fell in error in upholding an ante-dated promotion order which was de-hors the rules. The seniority is to be granted from the date of the promotion order which is provided in the Service Rules and the State having corrected an error, by correcting the date from which the promotion was to take effect in sync with the date of the promotion order, actually amounted to setting right, a wrong done earlier and in such circumstances there was not much scope for interference in writ jurisdiction but the learned Single Judge failed to consider this aspect of the matter, which has resulted in sheer miscarriage of justice.

5. It was urged that the State could not have granted retrospectivity to the promotions and in the aforesaid backdrop the grant of promotion to the respondents from a date earlier than the date of the promotion order could not be justified, however, the learned Single Judge did not appreciate this aspect and has applied the principles of res-judicata which was not applicable,

hence, the order impugned cannot be sustained and it deserves to be set aside.

6. The learned counsel for the State-appellants in support of their submissions has relied upon the following decisions:-

(i) **P. Sudhakar Rao v. U. Govinda Rao, (2013) 8 SCC 693;**

(ii) **Vinod Kumar v. State of Haryana and Others; Vinod Kumar v. State of Haryana, (2013) 16 SCC 293;**

(iii) **Union of India and Another v. Narendra Singh; (2008) 2 SCC 750;**

(iv) **State W.B. v. Amal Satpathi, 2024 SCC OnLine SC 3512;**

7. Sri H.G.S. Parihar, learned Senior Counsel assisted by Ms. Meenakshi Parihar Singh, learned counsel for the appellants of the connected intra-court appeal No. 122 of 2025 has primarily supported the aforesaid submissions advanced by the learned Additional Advocate General, however, in addition, it was urged that the appellants who were respondent nos. 5 and 7 in the connected petition no. Writ-A No. 5381 of 2024 were not given an opportunity of hearing and they have been castigated without an opportunity which has caused sheer miscarriage of justice. Neither notices were issued nor the appellants were granted an opportunity to file their response, hence, as far as the appellants of the intra-court appeal No. 122 of 2025 are concerned, the order impugned passed by the learned Single Judge practically is an ex-parte order and in such circumstances, it would be appropriate for the impugned order to be set aside while remanding the matter before the learned Single Judge with liberty to the appellants of Intra-court Appeal No. 122 of 2025 to file their response and the matter be re-considered and decided on merits.

8. Sri Gaurav Mehrotra, learned counsel assisted by Ms. Ritika Singh and Mr. Ahad Abdul Moin, learned counsel appearing for the writ petitioners in

both the connected petitions and the respondents herein, has refuted the aforesaid contentions and submitted that the issue of seniority had come to be settled in the year 2016. No challenge was ever raised to the said seniority list, however, later again in April, 2019 an attempt was made to challenge the seniority of the writ-petitioners which again was turned down. Finally in the year 2022, once again an attempt was made to challenge the seniority which did not find favour with the State.

9. Almost after 7 years, upon an indirect attempt made by certain persons of the direct recruit quota, the issue relating to promotion date of the writ petitioners was raised once again and the State considering the same passed the impugned order dated 09.08.2023 unsettling the seniority which was settled 7 years ago. This came to be challenged by the respondents herein, before the writ court who after hearing the parties and after meticulously considering the records, set aside order dated 09.08.2023.

10. It was further urged that the submissions advanced by the State that the service rule was violated, is misconceived as the rules clearly provided the requisite power to the State to grant seniority from a date prior to the date of the order. After complying with the necessary formalities and in accordance with the relevant rule, the order of promotion was issued and then the seniority list was prepared, hence, it cannot be said that the learned Single Judge has ignored the applicable rules.

11. It was also submitted that the State had issued a notice calling upon the writ-petitioners to furnish their reply as to why their date of appoitnmnet on the promotion post, may not be changed and despite having submitted a detailed reply, the State did not consider the same and rejected it by a cursory, non-speaking and a non-reasoned order.

12. It was further submitted that the appellants of the connected intra-court appeal were duly represented as respondents in the writ petitions and they were represented by their counsel. Ample opportunity was available with them to furnish their replies but they chose not to do so and in such circumstances, it cannot be said that the appellants of the connected appeal were not given any opportunity to place their submissions or contest the peittion on merits.

13. It was urged that in matters relating to seniority, where large number of persons may be affected, in such cases even if few persons are impleaded and they represent the cause which is under consideration of the court then it would not hamper the rights of the some persons concerned who may not have personally contested the matter.

14. It was further urged that as far as the appellants of the connected intra-court appeal are concerned namely Mukesh Pradhan and Mukesh Chandra Yadav, they were both impleaded as respondent nos. 5 and 7 in the writ petition which was filed by Sri Sanjeev Kumar Sinha and 2 Others i.e. Writ-A No. 5381 of 2024. The other respondents of Writ-A No. 9193 of 2024 i.e. the respondent no. 4 to 11 though affected, have not assailed the order passed by the writ court though they are in the same bracket as the appellants of the intra-court appeal No. 122 of 2025.

15. Similarly, the respondents in Writ-A No. 5381 of 2024 i.e. respondent nos. 4, 6, 8 to 11 have also not assailed the order passed by the learned Single Judge and it is only the respondent no. 5 and 7 who have filed the intra-court appeal bearing No. 122 of 2025.

In such circumstances where the parties were adequately represented and

the issue of seniority had been decided, hence, no interference was required from this Court on the ground that the appellants of the connected intra-court appeal were not provided any personal opportunity. For the aforesaid reasons, it was urged that the intra-court appeals deserve to be dismissed.

16. The learned counsel for the respondents relied upon the following decisions:-

(i) **Ashok Kumar Das v. University of Burdwan, (2010) 3 SCC 616;**

(ii) **Vikas Pratap Singh v. State of Chhattisgarh, (2013) 14 SCC 494;**

(iii) **Union of India v. Manpreet Singh Poonam; (2022) 6 SCC 105;**

(iv) **P.S. Sadasivaswamy v. State of T.N., (1975) 1 SCC 152;**

(v) **Union of India v. C. Girija, (2019) 15 SCC 633;**

(vi) **Ajay Kumar Shukla v. Arvind Rai, (2022) 12 SCC 579;**

(vi) **Prabodh Verma v. State of U.P., (1984) 4 SCC 251;**

(vii) **Amit Singh v. Ravindra Nath Pandey, (2022) 20 SCC 559;**

17. The Court had heard the learned counsel for the respective parties and has also perused the material available on record.

18. In order to appreciate the controversy involved in the instant intra-court appeals, certain brief facts may be noticed which are as under:-

19. The original writ-petitioners before the writ court were appointed on the post of Junior Grade Clerk in the year 1990 in the Secretariat Administration Department. In the year 2005, they were promoted to the post of Assistant Review-Officer. After satisfactory performance of their duties on the post of Assistant Review-Officer and having served on the said post for substantial length of time, they were eligible to be promoted to the post of Review-Officer.

20. The exercise for promotion of the writ petitioners commenced with issuance of letter dated 26.07.2016, to the Secretary of the Uttar Pradesh Public Service Commission requiring it to convene the meeting of the Selection Committee for the purposes of conducting selections for the vacant and newly created posts of Review-Officer in the promotion quota for the selection year 2015-16.

21. The Departmental Promotion Commitee held its meeting on 30.06.2016 and intimated the result to the State-Government. Thereafter the matter was sent to the Uttar Pradesh Public Service Commission to give its approval. The approval was received by the State on 13.07.2016 in respect of 144 persons and their promotion orders were issued on 13.07.2016 w.e.f. 30.06.2016. The persons so promoted were placed on probation for a period of two years and their seniority in the cadre of review-officers was to be considered.

22. In the aforesaid backdrop, a tentative seniority list was issued on 23.07.2016, upon which objections were invited and several objections were received from the direct recruits of 2013 Batch wherein the specific issue raised was regarding the grant of promotion to the writ-petitioners from 30.06.2016 even though their promotion orders were dated 13.07.2016.

23. In order to consider the said objections, a 3 member Committee was constituted who after due consideration rejected the objections and the final seniority list was published on 05.08.2016.

24. On 18.08.2018, a tentative seniority list was once again published for the purposes of inviting objections. This time too a four member Committee was constituted. The recruits of the 2013 Batch again raised the same

objections regarding the date of promotion given to the writ-petitioners w.e.f. 30.06.2016 instead of 13.07.2016. These objections were once again considered and rejected and then the final seniority list was published on 03.04.2019 and this time too the same was never challenged before any judicial forum.

25. On 15.07.2022, yet again a tentative seniority list was published against which objections were invited wherein similar objections as were raised earlier were filed by the direct recruits relating to the date of grant of appointment to the writ-petitioners from 30.06.2016 instead of 13.07.2016.

26. Again a 3 member Committee was constituted which did not find favour with the objections so raised and the date of promotion given to the writ petitioners was upheld vide order dated 11.08.2022.

27. However, on 14.07.2023, notices were issued to the writ-petitioners informing them that they had been erroneously promoted w.e.f. 30.06.2016 whereas they ought to have been promoted w.e.f. 13.07.2016, while calling for a response from the writ-petitioners. The writ petitioners furnished their detailed reply which did not find favour with the State-Authorities who rejected the same vide order dated 06.09.2023. Immediately at the said stage, a writ petition was filed by the writ-petitioners, however, since the final seniority list was issued, the same was withdrawn and the instant two writ-petitions bearing Writ-A No. 9193 of 2023 and Writ-A No. 5381 of 2024 came to be filed assailing the promotion order dated 25.10.2023, the office memorandum dated 06.09.2023 and the order rejecting the objections of the writ petitioners dated 09.08.2023.

28. Both the writ petitions were connected and have been allowed by the

common order passed by the writ court dated 24.02.2025. Since there was a typographical error in the impugned order, hence, the same was corrected vide order dated 28.02.2025.

29. At the outset, this Court finds that it will be appropriate to first take up the issue as raised by the appellants of connected intra-court appeal no. 122 of 2025 who are the direct recruits canvassing the proposition that the said appellants were not afforded a reasonable opportunity of hearing and that they must be granted an opportunity to contest the matter.

30. In this regard, if the record along with the undisputed facts are perused, it would indicate that Writ-A No. 5381 of 2024 came to be filed by Sanjeev Kumar Sinha and 2 Others, who were the writ-petitioners and belonging to the promotee quota. In the said writ petition, apart from the State-respondents, the appellants of intra-court appeal no. 122 of 2025 were impleaded as private respondents nos. 5 and 7.

31. The record would indicate that the writ court in its order dated 16.07.2024 had noticed that the State had raised a preliminary objection regarding maintainability whereas some of the advocates had also raised an objection that some parties were not impleaded in the writ petition and, therefore, liberty be granted to them to file their impleadment application. The writ Court noticed and directed the State to file a detailed counter affidavit raising all pleas including the issue of maintainability and the matter was directed to be listed on 05.08.2024. The order dated 16.07.2024 is being reproduced hereinafter for ready reference:-

> "*Heard Sri Gaurav Mehrotra, assisted by Ms. Ritika Singh, learned counsel for the petitioners, Sri Kuldeep Pati Tripathi, learned Additional Advocate General of Uttar Pradesh and Sri Vevek Kumar Shukla, learned counsel for the private respondents.*

At the very outset, Sri Kuldeep Pati Tripathi raised preliminary objection regarding the maintainability of the writ petition by submitting that this writ petition is not maintainable on various grounds which may be indicated in his affidavit and prays that for the same, some reasonable time may be given to him.

Some of advocates have raised objection to the effect that some parties have not been impleaded in the writ petition, therefore, liberty may be granted to them to file impleadment application.

Sri Gaurav Mehrotra has informed this Court that the identical issue is pending consideration before this Court wherein pleadings are complete and hearing is going on, therefore, this matter may be adjudicated on merits.

Let a detailed counter affidavit be filed by the State respondent taking therein additional plea regarding the maintainability of the writ petition and the objection regarding maintainability would be heard and disposed of first and after disposal of pleas regarding the maintainability of the writ petition, the matter may be proceeded further on merits.

Therefore, the detailed counter affidavit would be filed within a period of two weeks from today.

List this case in the week commencing 05.08.2024 as fresh. This matter may be taken up immediately after fresh."

32. The record would further indicate that when the matter was taken up on 06.08.2024 before the writ court, the State was granted three week's time to file a counter affidavit. The matter was thereafter listed on several dates and on 30.10.2024, the writ court directed the said Writ-A No. 5381 of 2024 to be connected with Writ-A No. 9193 of 2023 and it is in this fashion that both the writ petitions came to be connected which were finally heard at a later date and came to be decided on 24.02.2025.

33. The record also indicates that in Writ-A No. 5381 of 2024, the State had filed its detailed counter affidavit and the petitioners were granted a week's time to file its rejoinder as indicated in the order of the writ court date 28.08.2024.

34. Thus, it would be seen that as far as the both the writ petitions are concerned, the affected parties belonging to the direct quota groups were already impleaded as private respondents and they were represented through

their respective counsel, as well.

35. The record further indicates that as far as the private respondents in both the writ petitions are concerned, they all have been joined and impleaded in a representative capacity and all the said persons, though juniors to the writ petitioners have been placed at a higher rank above the writ petitioners in the impugned final seniority list dated 11.08.2023 and 06.09.2023.

36. It could not be disputed that all such person who were higher in rank than the writ petitioners as indicated in the seniority list dated 11.08.2023 and who have been promoted in terms of the final seniority list dated 06.09.2023, would not be affected by the outcome of the present controversy as in any case they were already higher in rank and it is only those persons who as per the petitioners were lower in rank but for the seniority list dated 06.09.2023 have been placed higher than the writ petitioners would be the ones actually aggrieved.

37. It is also not disputed that the private respondent nos. 10 and 11 namely Vipul Singh and Manas Kumar Pandey (relating to Writ-A No. 9193 of 2024) are of 2014 Batch and were appointed on 28.03.2017 and 16.05.2017 respectively and they too belonged to the same batch as that of Sri Mukesh Pradhan and Mukesh Chadra Yadav, who are the appellants of the connected intra-court appeal no. 122 of 2025 were issued notices and they had ample time to file their response.

38. Thus, on the basis of the aforesaid undisputed facts as reflected from the records, it cannot be said that the direct recruits of 2014 Batch were not noticed or that they were not granted any opportunity to contest the case on

merits.

39. The record would further indicate that certain other persons who were the beneficiaries of the final seniority list had moved their applications for impleadment and they were allowed to contest the proceedings. Thus, there is no dispute in so far as the presence of such contesting parties being on record and who were the beneficiaries of the impugned seniority list. As indicated above, the State had filed its detailed counter affidavit which was on the record.

40. At this stage, it will be worthwhile to examine as to whether any prejudice has been caused to the appellants of the intra-court appeal No. 122 of 2025 for non-impleading all the parties of the impugned seniority list. In this regard, it will be relevant to notice the decision of the Apex Court in **Pramod Verma (supra)**, wherein in paragraph 28, the Apex Court flagged an issue relating to non-joinder of necessary parties in context of a litigation relating to promotion. Thereafter in paragraph 50, it noticed that a writ court under Article 226 of the Constitution of India ought not to hear and dispose of the writ petitions without the persons who are vitally affected by the judgment being made parties or being before the court or at least some of them being before the court in a representative capacity if their numbers are too large to join them as respondents individually.

41. In **Ajay Kumar Shukla (supra)**, the Apex Court was faced with a similar situation and considering the earlier decisions on the said subject, the Apex Court in paragraph 45 to 51 held as under:-

> *"45. The other ground taken by the High Court for non-suiting the appellants were that they had not impleaded all the affected Junior Engineers. For the said proposition, the Division Bench [Rajesh Kumar Singh v. Rajeev Nain Upadhyay, 2019 SCC OnLine All 4782]*

of the High Court has placed reliance upon the judgment of this Court in Ranjan Kumar v. State of Bihar (2014) 16 SCC 187 . The above case was in respect of selection and appointment on the ground that the same had been made only on the basis of interview without holding any written test. The High Court had quashed [Vinay Kumar v. State of Bihar, 2003 SCC OnLine Pat 960] such selection and appointments even of those appointees who were not even parties to the petition. It was in these circumstances that this Court held that the appointments of non-parties could not be quashed. Facts of the said case are clearly distinguishable.

46. The Division Bench of the High Court also relied upon another judgment of this Court in Prabodh Verma v. State of U.P. (1984) 4 SCC 251. This case again related to challenge to appointments and in the said case there was no impleadment even in the representative capacity. In such circumstances, this Court said that the petition was liable to be dismissed for non-joinder of necessary parties. In fact, this judgment helps the appellants. Para 50 thereof is reproduced below : (SCC pp. 288-89)

"50. ... (1) A High Court ought not to hear and dispose of a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as the respondents or at least some of them being before it as the respondents in a representative capacity if their number is too large to join them as the respondents individually, and, if the petitioners refuse to so join them, the High Court ought to dismiss the petition for non-joinder of necessary parties."

(emphasis supplied)

47. The third case relied upon by the Division Bench for the above proposition, namely, State of Uttaranchal v. Madan Mohan Joshi (2008) 6 SCC 797 was again a case where none of the affected parties were impleaded not even in the representative capacity. In such circumstances, this Court remanded the matter to the High Court leaving it open to the original petitioners therein to move an appropriate application for impleading some of the affected teachers in their representative capacity.

48. The fourth case relied upon by the Division Bench on the above proposition is Indu Shekhar Singh v. State of U.P. (2006) 8 SCC 129. In this case also, the affected parties were not impleaded and this Court relied upon the judgment of this Court in Prabodh Verma [Prabodh Verma v. State of U.P., (1984) 4 SCC 251] .

49. In Tridip Kumar Dingal v. State of W.B. (2009) 1 SCC 768, C.K. Thakker, J., held that the case falls within the ambit of non-joinder of necessary parties as none of the 66 candidates against whom the complaint was made, were made parties. It further held that some of the respondents should have been arrayed in representative capacity. Para 41 is reproduced below : (SCC p. 780)

"41. Regarding protection granted to 66 candidates, from the record it is clear that their names were sponsored by the employment exchange and they were selected and appointed in 1998-1999. The candidates who were unable to get themselves selected and who raised a grievance and made a complaint before the Tribunal by filing

applications ought to have joined them (selected candidates) as the respondents in the original application, which was not done. In any case, some of them ought to have been arrayed as the respondents in a "representative capacity". That was also not done. The Tribunal was, therefore, wholly right in holding that in absence of selected and appointed candidates and without affording opportunity of hearing to them, their selection could not be set aside."

(emphasis supplied)

50. In the recent case of Mukul Kumar Tyagi v. State of U.P. (2020) 4 SCC 86, Ashok Bhushan, J., laid emphasis that when there is a long list of candidates against whom the case is proceeded, then it becomes unnecessary and irrelevant to implead each and every candidate. If some of the candidates are impleaded then they will be said to be representing the interest of rest of the candidates as well. The relevant portion of para 81 from the judgment is reproduced below : (SCC p. 119)

"81. ... We may further notice that the Division Bench [Deepak Sharma v. State of U.P., 2019 SCC OnLine All 5970] also noticed the above argument of non-impleadment of all the selected candidates in the writ petition but the Division Bench has not based its judgment on the above argument. When the inclusion in the select list of large number of candidates is on the basis of an arbitrary or illegal process, the aggrieved parties can complain and in such cases necessity of impleadment of each and every person cannot be insisted. Furthermore, when select list contained names of 2211 candidates, it becomes unnecessary to implead every candidate in view of the nature of the challenge, which was levelled in the writ petition. Moreover, few selected candidates were also impleaded in the writ petitions in representative capacity."

51. The present case is a case of preparation of seniority list and that too in a situation where the appellants (original writ petitioners) did not even know the marks obtained by them or their proficiency in the examination conducted by the Commission. The challenge was on the ground that the Rules on the preparation of seniority list had not been followed. There were 18 private respondents arrayed to the writ petition. The original petitioners could not have known who all would be affected. They had thus broadly impleaded 18 of such Junior Engineers who could be adversely affected. In matters relating to service jurisprudence, time and again it has been held that it is not essential to implead each and every one who could be affected but if a section of such affected employees is impleaded then the interest of all is represented and protected. In view of the above, it is well settled that impleadment of a few of the affected employees would be sufficient compliance of the principle of joinder of parties and they could defend the interest of all affected persons in their representative capacity. Non-joining of all the parties cannot be held to be fatal....."

42. The aforesaid decision clearly lays down that impleadment of a few affected employees would be sufficient compliance relating to the principles

of joinder of parties as they are in a position to defend the interest of all other affected parties in representative capacity and non-joining of all the parties would not be fatal.

43. There is another way to look at this issue and i.e. if the party raises a plea of non-compliance of principles of natural justice, this in itself may not always work for setting aside a judgment unless it is shown that the party raising such an objection has suffered consequential failure of justice.

44. It will also be relevant to point out that the learned Senior Counsel on behalf of the appellants of the connected intra-court appeal no. 122 of 2025 could not indicate as to what additional material or additional submissions could have been made by the appellants, had they contested the proceedings before the writ court, as all possible submissions raised by the said appellants were already advanced by the State and it was the State who was to defend the impugned order.

45. A coordinate Bench of this Court in Durgawati Singh V. Deputy Registrar, Firms Societies and Chits, Lucknow; 2022 (2) ALJ 200 wherein one of us (Jaspreet Singh, J.) had the occasion to consider as to whether an order passed without affording an opportunity of hearing can be set aside simplicitor on the aforesaid ground or the person seeking the indulgence of the Court must also establish real prejudice or consequential failure of justice.

46. This Court in **Durgawati (supra)** in para 33 considering the decision of the Apex Court in **State of U.P. v. Sudhir Kumar, 2020 SCC OnLine SC 847** wherein the Apex Court after considering the large number of authorities culled out principles which have been noted in para-39 of the

decision of **Sudhir Kumar (supra)** which was relied upon by the Division Bench of this Court in para-33 in **Durgawati (supra)** which reads as under:-

> *"33. Lately, the Apex Court in State of U.P. v. Sudhir Kumar, 2020 SCC OnLine SC 847 had the occasion to consider the issue once again and after noticing a large number of authorities and previous decisions, culled out the following principles noted in Para 39, which reads as under:—*
>
> *"39. An analysis of the aforesaid judgments thus reveals:*
>
> *(1) Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.*
>
> *(2) Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.*
>
> *(3) No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.*
>
> *(4) In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.*
>
> *(5) The "prejudice" exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice."*

47. Now, applying the aforesaid principles to the instant case, this Court finds that first and foremost, some persons from the impugned seniority list were impleaded as a party in the two writ petitions and they had contested the matter before the learned Single Judge.

48. The matter was contested tooth and nail along with the State by their

side and merely because the appellants of the intra court appeal No. 122 of 2025 were not granted any personal opportunity as alleged but they have not pleaded any prejudice which has been caused as their rights were common and duly represented by the others who were similarly situate respondents in the two writ petitions and had contested the matter.

49. Hence, this Court does not find much substance in the submissions of the learned Senior Counsel seeking to set aside the order passed by the learned Single Judge solely on the ground of not being provided with an opportunity of hearing especially when no prejudice could be established and moreover the law as laid down in **Pramod Vema (supra)** and **Ajay Shukla (supra)** also does not aid the learned Senior Counsel hence, for the aforesaid reasons, the submissions of the learned Senior Counsel for the appellants of Intra-Court Appeal No. 122 of 2025 is turned down.

50. Now, reverting to the submissions advanced by the learned Additional Advocate General in Intra Court Appeal No. 120 of 2025 wherein it was urged that the learned Single Judge did not consider the rules applicable to the parties which did not not envisage granting promotion from an ante-date rather the promotion could have been made only from the date of issuance of the order.

51. Taking the submissions forward, the learned Additional Advocate General had also submitted that the proviso to Section 8 of the Rules of 1991 uses the word ‘person’ which primarily connotes a singular. It was urged that the said proviso preserves the power to grant any promotion from back date only in such cases where certain consequences/directions emanate from a decision rendered by a Competent Tribunal/Court. It was thus urged that this aspect has not been noticed by the learned Single Judge while passing the

impugned order.

52. On the other hand, the learned counsel for the respondents had argued that the proviso to the aforesaid sections of the Rules of 1991 saves the power of the State (employer) to provide the promotion from a prior date.

53. In order to test the veracity of the aforesaid submissions, it will be relevant to notice the said Rule 8 of Rules of 1991 and the same reads as under:-

*"**8. Seniority where appointments by promotion 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 specifies 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 of issuance of the 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.
(2) The seniority inter se of persons appointed on the result of any one selection,-
(a) through direct recruitment, shall be the same as it is shown in the merit list prepared by the Commission or by the Committee, as the case may be;
(b) by promotion, shall be as determined in accordance with the principles laid down in Rule 6 or Rule 7, as the case may be, according as the promotion are to be made from a single feeding cadre or several feeding cadres.
(3) Where appointments are made both by promotion and direct recruitment on the result of any one selection the seniority of promotees vis-a-vis direct recruits shall be determined in a cyclic order (the first being a promotee) so far as may be, in accordance with the quota prescribed for the two sources.
Illustrations
(1) Where the quota of promotees and direct recruits is in the proportion of 1 : 1 the seniority shall be in the following order-

First	*...*	*Promotee*
Second	*...*	*Direct recruits*

and so on.
(2) Where the said quota is in the proportion of 1 : 3 the seniority shall be in the following order-

First	*...*	*Promotee*
Second to Fourth	*...*	*Direct recruits*
Fifth	*...*	*Promotee*
Sixth to eight	*...*	*Direct recruits*

and so on:
Provided that-
(i) where appointment 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 appointment 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 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 service rules the unfilled vacancies from any source could, in the circumstances mentioned in the relevant service rules be filled from the other source and appointment 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 of their quota."

54. From a perusal of the aforesaid rule, it would indicate that it clearly states that the seniority of a person (s) shall be subject to the provisions of the sub-rules and it is to be determined from the date of the order of their substantive appointments. Thus, the aforesaid rule clearly indicates that the seniority shall be considered from the order of their substantive appointment.

55. Before considering this aspect of the matter, it will be relevant to notice the impact of a proviso which is appended to a particular section. In the words of Lord Macmillan the purpose of a proviso is expressed as 'the proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment and its effect is to confine it to that case'.

56. The purpose of proviso was considered by the Apex Court in **Sundaram Pillai V. VR. Pattabiraman, AIR 1985 SC 582**, and it was expressed that by and large a proviso may serve the following four different purposes:-

> *"(i) qualifying or excepting certain provisions from the main enactment:-*
>
> *(ii) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable;*
>
> *(iii) it may be so embedded in the Act itself as to become an integral part of the enactment, and thus acquire the tenor and colour of the substantive enactment itself; and*
>
> *(iv) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision."*

57. Similarly, the Apex Court in **Southern Petrochemical Industries Co. Ltd. v. Electricity Inspector & ETIO, (2007) 5 SCC 447** in paragraph 98 it

followed the observations in Sundaram Pillai (supra) and has observed as under:-

> *"98. Once the aforementioned conclusion is arrived at, it would not be necessary to construe the proviso appended to sub-section (1) of Section 20 in its own language. Proviso, as is well known, has four functions, as has been noticed by this Court in S. Sundaram Pillai v. V.R. Pattabiraman [(1985) 1 SCC 591] , in the following terms : (SCC p. 610, para 43)*
>
> *"43. (1) qualifying or excepting certain provisions from the main enactment;*
>
> *(2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable;*
>
> *(3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and*
>
> *(4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision."*
>
> *In a case of this nature, the proviso restricts the operation of the repeal clause. It seeks to protect the matter specified thereunder despite such repeal. Section 6 of the General Clauses Act seeks to achieve the same purpose, subject of course, to the repealing Act having no provision inconsistent with the repealed Acts. The 1962 Act provided for grant of exemption from payment of electricity tax levied on consumption of electricity. When a notification was issued by the appropriate authority, the same had to be given a purpose. A notification issued thereunder could be an act which would come within the purview of the words "anything duly done."*

58. The Apex Court in **Indore Development Authority v. Manoharlal and Others; (2020) 8 SCC 129** had the occassion to consider the manner in which the proviso is to be interpreted and it also relied upon an earlier Authority of S. Sunderam Pillai (supra) and in paragraphs 193 to 195, it has been expressed as under:-

> *"193. In S. Sundaram Pillai v. V.R. Pattabiraman [S. Sundaram Pillai v. V.R. Pattabiraman, (1985) 1 SCC 591] , the scope of a proviso was clarified. The relevant discussion is quoted as under : (SCC pp. 606-10, paras 27, 29-30, 35-37 & 43)*
>
> *"27. The next question that arises for consideration is as to what is the scope of a proviso and what is the ambit of an Explanation either to a proviso or to any other statutory provision. We shall first take up the question of the nature, scope and extent of a proviso. The well-established rule of interpretation of a proviso is that a proviso may have three separate functions. Normally, a proviso is meant to be an exception to something within the main enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. In other words, a proviso cannot be torn apart from the main enactment nor can it be used to nullify or set at naught the real object of*

the main enactment.

***

29. Odgers in Construction of Deeds and Statutes (5th Edn.) while referring to the scope of a proviso mentioned the following ingredients:

'P. 317. Provisos —These are clauses of exception or qualification in an Act, excepting something out of, or qualifying something in, the enactment which, but for the proviso, would be within it.

P. 318. Though framed as a proviso, such a clause may exceptionally have the effect of a substantive enactment.'

30. Sarathi in Interpretation of Statutes at pp. 294-95 has collected the following principles in regard to a proviso:

(a) When one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso.

(b) A proviso must be construed with reference to the preceding parts of the clause to which it is appended.

(c) Where the proviso is directly repugnant to a section, the proviso shall stand and be held a repeal of the section as the proviso speaks the latter intention of the makers.

(d) Where the section is doubtful, a proviso may be used as a guide to its interpretation : but when it is clear, a proviso cannot imply the existence of words of which there is no trace in the section.

(e) The proviso is subordinate to the main section.

(f) A proviso does not enlarge an enactment except for compelling reasons.

(g) Sometimes an unnecessary proviso is inserted by way of abundant caution.

(h) A construction placed upon a proviso which brings it into general harmony with the terms of section should prevail.

(i) When a proviso is repugnant to the enacting part, the proviso will not prevail over the absolute terms of a later Act directed to be read as supplemental to the earlier one.

(j) A proviso may sometimes contain a substantive provision.

***

35. A very apt description and extent of a proviso was given by Lord Loreburn in Rhondda Urban District Council v. Taff Vale Railway Co. [Rhondda Urban District Council v. Taff Vale Railway Co., 1909 AC 253 (HL)] , where it was pointed out that insertion of a proviso by the draftsman is not always strictly adhered to its legitimate use and at times a section worded as a proviso may wholly or partly be in substance a fresh enactment adding to and not merely excepting something out of or qualifying what goes before. To the same effect is a later decision of the same Court in Jennings v. Kelly [Jennings v. Kelly, 1940 AC 206 (HL)] , where it was observed thus:

We must now come to the proviso, for there is, I think, no doubt that, in

the construction of the section, the whole of it must be read, and a consistent meaning, if possible, given to every part of it. The words are:… 'provided that such licence shall be granted only for premises situate in the ward or district electoral division in which such increase in population has taken place…' There seems to be no doubt that the words "such increase in population" refer to the increase of not less than 25% of the population mentioned in the opening words of the section.

36. While interpreting a proviso care must be taken that it is used to remove special cases from the general enactment and provide for them separately.

37. In short, generally speaking, a proviso is intended to limit the enacted provision so as to except something which would have otherwise been within it or in some measure to modify the enacting clause. Sometimes a proviso may be embedded in the main provision and becomes an integral part of it so as to amount to a substantive provision itself.

***

43. We need not multiply authorities after authorities on this point because the legal position seems to be clearly and manifestly well established. To sum up, a proviso may serve four different purposes:

(1) qualifying or excepting certain provisions from the main enactment:

(2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable:

(3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and

(4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision."

(emphasis supplied)

194.Craies on Statute Law, 7th Edn., p. 218 has observed, with respect to the construction of provisos thus:

"The effect of an excepting or qualifying proviso, according to the ordinary rules of construction, is to except out of the preceding portion of the enactment, or to qualify something enacted therein, which but for the proviso would be within it; and such a proviso cannot be construed as enlarging the scope of an enactment when it can be fairly and properly construed without attributing to it that effect."

(emphasis supplied)

R. v. Dibdin [R. v. Dibdin, 1910 P 57 (CA)] , held as under : (P p. 125)

"The fallacy of the proposed method of interpretation is not far to seek. It sins against the fundamental rule of construction that a proviso must be considered with relation to the principal matter to which it stands as a proviso. It treats it as if it were an independent enacting clause instead of being dependent on the main enactment. The courts … have refused to be led astray by arguments such as those which have been addressed to us, which depend solely on taking words absolutely in their strict literal sense, disregarding the fundamental consideration that they are appearing in the proviso."

(emphasis supplied)

195.Ishverlal Thakorelal Almaula v. Motibhai Nagjibhai [Ishverlal Thakorelal Almaula v. Motibhai Nagjibhai, (1966) 1 SCR 367 : AIR 1966 SC 459] considered the effect of a proviso and said that its function is
"to except or qualify something enacted in the substantive clause, which but for the proviso would be within that clause. It may ordinarily be presumed in construing a proviso that it was intended that the enacting part of the section would have included the subject-matter of the proviso." (AIR p. 465, para 8)
Similar observations and considerations weighed in Haryana State Coop. Land Development Bank Ltd. v. Employees Union [Haryana State Coop. Land Development Bank Ltd. v. Employees Union, (2004) 1 SCC 574 : 2004 SCC (L&S) 257] and other decisions noted below. [Shimbhu v. State of Haryana, (2014) 13 SCC 318 : (2014) 5 SCC (Cri) 651; Kedarnath Jute Mfg. Co. Ltd. v. CTO, (1965) 2 SCR 626 : AIR 1966 SC 12; Shah Bhojraj Kuverji Oil Mills & Ginning Factory v. Subbash Chandra Yograj Sinha, AIR 1961 SC 1596; Dwarka Prasad v. Dwarka Das Saraf, (1976) 1 SCC 128; CIT v. Indo-Mercantile Bank Ltd., 1959 Supp (2) SCR 256 : AIR 1959 SC 713; Romesh Kumar Sharma v. Union of India, (2006) 6 SCC 510 : 2006 SCC (L&S) 1430] In Subbash Chandra Yograj Sinha [Shah Bhojraj Kuverji Oil Mills & Ginning Factory v. Subbash Chandra Yograj Sinha, AIR 1961 SC 1596] it was observed that : (AIR p. 1600, para 9)

"9. The law with regard to the provisos is well settled and well understood. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment, and ordinarily, a proviso is not interpreted as stating a general rule. But, the provisos are often added not as exceptions or qualifications to the main enactment but as savings clauses, in which cases they will not be construed as controlled by the section. The proviso which has been added to Section 50 of the Act deals with the effect of repeal. The substantive part of the section repealed two Acts which were in force in the State of Bombay. If nothing more had been said, Section 7 of the Bombay General Clauses Act would have applied, and all pending suits and proceedings would have continued under the old law, as if the repealing Act had not been passed. The effect of the proviso was to take the matter out of Section 7 of the Bombay General Clauses Act and to provide for a special saving. It cannot be used to decide whether Section 12 of the Act is retrospective. It was observed by Wood, V.C., in Fitzgerald v. Champneys [Fitzgerald v. Champneys, (1861) 2 J&H 31 : 70 ER 958] that saving clauses are seldom used to construe Acts. These clauses are introduced into Acts which repeal others, to safeguard rights which, but for the savings, would be lost. The proviso here saves pending suits and proceedings, and further enacts that suits and proceedings then pending are to be transferred to the courts designated in the Act and are to continue under the Act and any or all the provisions of the Act are to apply to them. The learned Solicitor General contends that the savings clause enacted by the proviso, even if treated as substantive law, must be taken to apply only to suits and proceedings pending at the time of the repeal which, but for the proviso, would be governed by the Act repealed. According to the learned Attorney General, the effect of the savings is much wider, and it applies to such cases as come within the words of the proviso, whenever the Act is extended to new areas."

(emphasis supplied)

"27. The next question that arises for consideration is as to what is the scope of a proviso and what is the ambit of an Explanation either to a proviso or to any other statutory provision. We shall first take up the question of the nature, scope and extent of a proviso. The well-established rule of interpretation of a proviso is that a proviso may have three

separate functions. Normally, a proviso is meant to be an exception to something within the main enactment or to qualify something enacted therein which but for the proviso would be within the purview of the enactment. In other words, a proviso cannot be torn apart from the main enactment nor can it be used to nullify or set at naught the real object of the main enactment.

***

29. Odgers in Construction of Deeds and Statutes (5th Edn.) while referring to the scope of a proviso mentioned the following ingredients:
'P. 317. Provisos —These are clauses of exception or qualification in an Act, excepting something out of, or qualifying something in, the enactment which, but for the proviso, would be within it.
P. 318. Though framed as a proviso, such a clause may exceptionally have the effect of a substantive enactment.'
30. Sarathi in Interpretation of Statutes at pp. 294-95 has collected the following principles in regard to a proviso:
(a) When one finds a proviso to a section the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso.
(b) A proviso must be construed with reference to the preceding parts of the clause to which it is appended.
(c) Where the proviso is directly repugnant to a section, the proviso shall stand and be held a repeal of the section as the proviso speaks the latter intention of the makers.
(d) Where the section is doubtful, a proviso may be used as a guide to its interpretation : but when it is clear, a proviso cannot imply the existence of words of which there is no trace in the section.
(e) The proviso is subordinate to the main section.
(f) A proviso does not enlarge an enactment except for compelling reasons.
(g) Sometimes an unnecessary proviso is inserted by way of abundant caution.
(h) A construction placed upon a proviso which brings it into general harmony with the terms of section should prevail.
(i) When a proviso is repugnant to the enacting part, the proviso will not prevail over the absolute terms of a later Act directed to be read as supplemental to the earlier one.
(j) A proviso may sometimes contain a substantive provision.

***

35. A very apt description and extent of a proviso was given by Lord Loreburn in Rhondda Urban District Council v. Taff Vale Railway Co. [Rhondda Urban District Council v. Taff Vale Railway Co., 1909 AC 253 (HL)] , where it was pointed out that insertion of a proviso by the draftsman is not always strictly adhered to its legitimate use and at times a section worded as a proviso may wholly or partly be in substance a fresh enactment adding to and not merely excepting something out of or qualifying what goes before. To the same effect is a later decision of the same Court in Jennings v. Kelly [Jennings v. Kelly, 1940 AC 206 (HL)] , where it was observed thus:
We must now come to the proviso, for there is, I think, no doubt that, in the construction of the section, the whole of it must be read, and a consistent meaning, if possible, given to every part of it. The words are:… 'provided that such licence shall be granted only for premises situate in the ward or district electoral division in which such increase in population has taken place…' There seems to be no doubt that the words "such increase in population" refer to the increase of not less than 25% of the population mentioned in the opening words of the section.
36. While interpreting a proviso care must be taken that it is used to remove special cases from the general enactment and provide for them

separately.

37. In short, generally speaking, a proviso is intended to limit the enacted provision so as to except something which would have otherwise been within it or in some measure to modify the enacting clause. Sometimes a proviso may be embedded in the main provision and becomes an integral part of it so as to amount to a substantive provision itself.

***

43. We need not multiply authorities after authorities on this point because the legal position seems to be clearly and manifestly well established. To sum up, a proviso may serve four different purposes:

(1) qualifying or excepting certain provisions from the main enactment:

(2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable:

(3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and

(4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision."

(emphasis supplied)

194.Craies on Statute Law, 7th Edn., p. 218 has observed, with respect to the construction of provisos thus:

"The effect of an excepting or qualifying proviso, according to the ordinary rules of construction, is to except out of the preceding portion of the enactment, or to qualify something enacted therein, which but for the proviso would be within it; and such a proviso cannot be construed as enlarging the scope of an enactment when it can be fairly and properly construed without attributing to it that effect."

(emphasis supplied)

R. v. Dibdin [R. v. Dibdin, 1910 P 57 (CA)] , held as under : (P p. 125)

"The fallacy of the proposed method of interpretation is not far to seek. It sins against the fundamental rule of construction that a proviso must be considered with relation to the principal matter to which it stands as a proviso. It treats it as if it were an independent enacting clause instead of being dependent on the main enactment. The courts ... have refused to be led astray by arguments such as those which have been addressed to us, which depend solely on taking words absolutely in their strict literal sense, disregarding the fundamental consideration that they are appearing in the proviso."

(emphasis supplied)

195.Ishverlal Thakorelal Almaula v. Motibhai Nagjibhai [Ishverlal Thakorelal Almaula v. Motibhai Nagjibhai, (1966) 1 SCR 367 : AIR 1966 SC 459] considered the effect of a proviso and said that its function is

"to except or qualify something enacted in the substantive clause, which but for the proviso would be within that clause. It may ordinarily be presumed in construing a proviso that it was intended that the enacting part of the section would have included the subject-matter of the proviso." (AIR p. 465, para 8)

Similar observations and considerations weighed in Haryana State Coop. Land Development Bank Ltd. v. Employees Union [Haryana State Coop. Land Development Bank Ltd. v. Employees Union, (2004) 1 SCC 574 : 2004 SCC (L&S) 257] and other decisions noted below. [Shimbhu v. State of Haryana, (2014) 13 SCC 318 : (2014) 5 SCC (Cri) 651; Kedarnath Jute Mfg. Co. Ltd. v. CTO, (1965) 2 SCR 626 : AIR 1966 SC 12; Shah Bhojraj Kuverji Oil Mills & Ginning Factory v. Subbash Chandra Yograj Sinha, AIR 1961 SC 1596; Dwarka Prasad v. Dwarka Das Saraf, (1976) 1 SCC 128; CIT v. Indo-Mercantile Bank Ltd., 1959 Supp (2) SCR 256 : AIR 1959 SC 713; Romesh Kumar Sharma v. Union of India, (2006) 6

SCC 510 : 2006 SCC (L&S) 1430] In Subbash Chandra Yograj Sinha [Shah Bhojraj Kuverji Oil Mills & Ginning Factory v. Subbash Chandra Yograj Sinha, AIR 1961 SC 1596] it was observed that : (AIR p. 1600, para 9)

"9. The law with regard to the provisos is well settled and well understood. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment, and ordinarily, a proviso is not interpreted as stating a general rule. But, the provisos are often added not as exceptions or qualifications to the main enactment but as savings clauses, in which cases they will not be construed as controlled by the section. The proviso which has been added to Section 50 of the Act deals with the effect of repeal. The substantive part of the section repealed two Acts which were in force in the State of Bombay. If nothing more had been said, Section 7 of the Bombay General Clauses Act would have applied, and all pending suits and proceedings would have continued under the old law, as if the repealing Act had not been passed. The effect of the proviso was to take the matter out of Section 7 of the Bombay General Clauses Act and to provide for a special saving. It cannot be used to decide whether Section 12 of the Act is retrospective. It was observed by Wood, V.C., in Fitzgerald v. Champneys [Fitzgerald v. Champneys, (1861) 2 J&H 31 : 70 ER 958] that saving clauses are seldom used to construe Acts. These clauses are introduced into Acts which repeal others, to safeguard rights which, but for the savings, would be lost. The proviso here saves pending suits and proceedings, and further enacts that suits and proceedings then pending are to be transferred to the courts designated in the Act and are to continue under the Act and any or all the provisions of the Act are to apply to them. The learned Solicitor General contends that the savings clause enacted by the proviso, even if treated as substantive law, must be taken to apply only to suits and proceedings pending at the time of the repeal which, but for the proviso, would be governed by the Act repealed. According to the learned Attorney General, the effect of the savings is much wider, and it applies to such cases as come within the words of the proviso, whenever the Act is extended to new areas."

(emphasis supplied)

59. From the perusal of the aforesaid decisions, it would be clear that the purpose of incorporating a proviso is to qualify the main provision or to create an exception to what is in the enactment.

60. If the aforesaid principle is applied in the instant Rule of 1991, it would be clear that in so far as the main part of Section 8 of Rules of 1991 is concerned, it definitely provides that ordinarily the date of promotion would be considered from the date of the order of their substantive appointments.

61. Needless to say that the proviso carves an exception and it is an indicator of the fact that the Rules reserves the power or rather it enabled the

employer to invoke the said proviso and provide appointment on the promoted post from a particular back date, if required. If at all, the promotions were to be covered only from the date on which the promotion order was to take effect and it was to apply uniformally then there was no purpose of incorporating the proviso.

62. In so far as the contention that the proviso has been appended to consider cases in exceptional cases where a Court or a Tribunal gives directions in context of one particular person and in order to give effect to the said directions, the said proviso to Section 8 has been appended. This submission does not satisfy the confidence of this Court, for the reason that in case if the said exception was only in context of giving effect to any decision or a direction by a court of law then the same could easily have been incorporated in explicit language in the said proviso itself. However, the language used in the proviso does not give any indication as such, which is sought to be urged by the State. Moreover, the Court while considering a provision has to take the provision as it is and one of the cardinal principles of interpretation is that nothing should be read in an enactment and the use of the words in the enactment should not be interpreted in such a manner that the words used in the enactment are made superfluous. Thus, the reasoning of the learned counsel for the appellant-State does not find favour with this Court.

63. There is another reason to eschew the submissions on behalf of the State-appellant and that is, the word ‘person’ as used in the proviso to Section 8 cannot mean only in respect of one person. Now, it is well settled to be disputed that the use of the phrase in singular would also include its plural. Thus, to state that merely because the word ‘person’ has been used in

the singular context, it would not include several persons, in plurality, cannot be accepted.

64. Be that as it may, a very important aspect that needs to be seen is the fact that the State had issued a letter dated 27.06.2016 (a copy of which has been placed on record as Annexure No. 4 to the writ petition) addressed to the Secretary, Public Service Commission indicating that the promotions to the vacant seats of Review Officers is to be done and the same is to be concluded as that the said promotions can be made prior to 30.06.2016 for the current selection year (referrable to the year commencing 01.07.2015 till 30.06.2016).

65. The text of the said letter is being reproduced hereinafter for ready reference:-

> *"उपर्युक्त विषय पर अवगत कराना है कि चयन वर्ष 2015-16 में उपलब्ध पदोन्नति कोटे की स्थित एवं नवसृजित पदों के सापेक्ष पदोन्नति कोटे पर चयन/प्रोन्नति हेतु अधिनियम निर्धारित प्रारूप में, निर्विवादित वरिष्ठता सूची, पात्रता सूची, संगत सेवा नियमावली की प्रति के साथ प्रेषित की जा रही है। चयन समिति के 02 सदस्यों का विवरण निम्नवत् हैः-*

क्रमांक	*नाम*	*पदनाम*	*मो०नं०*
1	*श्री धन्य कुमार*	*विशेष सचिव, सचिवालय प्रशासन विभाग, उ० प्र० शासन।*	*9454413670*
2	*श्री अजीत प्रकाश*	*संयुक्त सचिव, व्यवसायिक शिक्षा एवं कौशल विकास, उ०प्र० शासन*	*9454413352*

> *2. <u>उपरोक्त यो सम्बंध में मुझे यह कहने का निर्देश हुआ है कि कृपया चयन समिति की बैठक इस प्रकार तिथि निर्धारित कराने का कष्ट करें कि वर्तमान चयन वर्ष में 30 जून के पूर्व संस्तुत कार्मिकों की पदोन्नति की जा सके।"</u>*

66. This letter is indicative of the fact that the State was desirous of completing the exercise of promotion upto 30.06.2016 i.e. prior to the new selection year. The said letter was issued on 27.06.2016 i.e. 3 days prior to the commencement of the new selection year. If at all, the State did not

intend to provide the promotion to the said incumbents prior to 30.06.2016, then there was no requirment to incorporate the desire and the intention (which was in the nature of a direction) in the said letter dated 27.06.2016.

67. It is not disputed or controverted by the learned Additional Advocate General for the State that the person who had issued the said letter was not authorized to do so or that he has exceded his powers by incorporating certain text in the said letter without authority.

68. In view thereof where the State is considered as the model employer and is expected to be fully acquainted with the Rules and even while issuing the letter dated 27.06.2016 expressed its intention to the Commission to give its recommendation prior to 30.06.2016 which manifest its clear intention what it desired to achieve.

69. At this stage, this Court also records a statement of fact, that we had called upon the learned Additional Advocate General to furnish the records regarding the appointment. The originals were placed before the Court which after perusal was returned, whereas a photocopy of the said record was retained and is part of these appeals, now.

70. From the perusal of the original records which were placed before the Court, there is no indication that any point of time prior to the passing of the impugned order, any deliberation was held that the promotion orders issued to the writ petitioners were contrary to law or the rules.

71. The record of this intra-court appeal indicates that the entire exercise was done in accordance with the rules which culminated in the promotion orders issued to the writ-petitioners specifically incorporating the date of promotion i.e. 30.06.2016. The chronology as well as the record reflects that

the promotion orders issued on 30.07.2016 were consistent with the intention reflected in the letter dated 27.06.2016.

72. It would have been a different thing to state, that even though such letter was issued and in furtherance thereof the order of promotion dated 13.07.2016 was issued but had there been no provision to grant promotion from an earlier date then the submissions of the appellant could have been appreciated, however, the Rules on the other hand does provide an exception and it is perhaps for the said reason that the State issued the letter dated 27.06.2016 being fully acquainted with the provisions of the Rules, 1991.

73. Moreover, it was not the case of the State that the letter dated 27.06.2016 was issued without authority. Even otherwise there is a presumtion of officials acts being done in a proper manner as per law. In case if any party seeks to dispute it then the burden is on such party to raise such plea and establish it. In this case it was for the State to have pleaded and proved that the letter dated 27.06.2016 and thereafter promotion order were bad and the State ought to have proved why it was bad in law. However, it was not done.

74. There is another important aspect of the matter which is again not disputed by the appellants, that the members belonging to the direct quota had raised the issue of granting promotion from an earlier date three times before the State. It is also not disputed that on all 3 occasions, at different points of times, a decision was taken rejecting the objections of the members of the direct quota and most importantly none of the said decisions of the State were ever challenged by the members of direct quota before any court of law.

75. In absence of any challenge to the earlier 3 orders, now after 7 years whether the State can be permitted to tinker with the seniority list, after conforming the writ-petitioners (who were on probation for two years) is a fact which reflects poorly on the appellant-State.

76. The record reflects that vide order dated 05.08.2016, the State had formed a 3 Member Committee to examine the objections raised against the promotions of the writ-petitioners (a copy of the same has been placed on record as Annexure No. 9 with the writ petition). In the said order, in paragraph 6, it is clearly indicated that the objections raised by the respective parties were considered and the recommendations given in favour of the writ-petitioners was accepted. There is no dispute to the fact that the recommendations of the 3 Member Committee was never challenged.

77. Once again, similar objections were raised relating to the date of promotion of the writ-petitioners which were placed before a 4 Member Committee, who again considered the same but did not deem approrpriate to give any recommendations contrary to the earlier recommendation and it was turned down.

78. On the third occasion, the same issue was raised and a 3 Member Committee once again taking note of the facts and circumstances vide its order dated 11.08.2022 rejected the objections (a copy of which is on record with the writ petition as as Annexure No. 11).

79. This Court further takes note of the submissions that State has been non-suited by the learned Single Judge by invoking the principles of res-judicata in context with the fact that on 3 occasions, objections raised were rejected.

80. The learned Single Judge found that the objections raised by the candidates who belonged to the direct quota, was in context with the date of promotion given to the writ petitioners w.e.f. 30.06.2017 and it was upheld by the State after taking into consideration the objections of the two contesting parties and after having arrived at a conscious decision, it became a quasi-judicial order which at best could have been assailed before a Judicial Forum by the aggrieved party and not having done so it attained finality and later it could not be set aside as the earlier decision would operate as res-judicata.

81. This Court is of the opinion that adjudication is a legal process by which a neutral authority/court or Tribunal resolves a dispute between the parties by considering the material, evidence and by applying the law and then issue a binding decision. The Government may make decisions or issue orders which can be administrative or executive in nature and may not be necessarily adjudicatory because it does not act as a neutral body while making decisions nor do they follow the adversarial process. For the aforesaid reasons, an order of the Government is typically an administrative or an executive order and since it does not arise from any judicial determination in the sense that it does not follow the adversarial process by applying the law (as understood in the classical sense), hence, such orders do not meet the test of adjudication. Moreover, the decisions of the Government through administrative or executive orders often reflects the administrative convenience or policy considerations rather that the determination of legal rights or obligations. For the aforesaid reasons, generally the orders passed by the State lacks the procedural and substantive hallmarks of an adjudication, hence, they may not be adjudicatory acts, accordingly, it may

not attract the doctrine of res-judicata. Though, the proposition of invoking the principles of res-judicata in the instant case may be debatable but then there are several other reasons mentioned in this opinion of this Court which may lead to the same conclusion as arrived at by the learned Single Judge. This Court may not entirely agree with the reasons of the learned Single Judge but for our own separate reasons as recorded hereinabove, this Court does not find any fault with the conclusion arrived at by the learned Single Judge. Hence, this aspect also does not impress this Court.

82. In so far as the present writ-petitioners are concerned, their grievances accrued when notices dated 14.07.2023 were issued calling upon the writ-petitioners to show cause as to why the date of their promotion may not be made in consonance with the date of issuance of the order i.e. 13.07.2016 instead of a prior date 30.06.2016 (a copy of the aforesaid notice is on record as of the writ petition as Annexure No. 12). The aforesaid notice reveals that the State took a ground that on account of some error, the date of promotion had been made applicable from 30.06.2016 instead of 13.07.2016.

83. The record also reflects that some of the writ petitioners had filed their detailed objections which are on record of the writ petition as Annexure No. 13 but the same came to be rejected vide order dated 09.08.2023 which was impugned in the writ petition and is at running page 221 and 222 of the intra-court appeal.

84. The ground taken to reject the objections of the writ-petitioners was that the Committee which had been constituted to consider the recommendations for promotion was to examine only as to whether the persons concerned were eligible for promotion or not and not to consider whether the promotion could be given from a date prior to the date of the

issuance of the promotion order.

85. A specific plea was taken by the writ petitioner that Rule 8 did confer power on the State to provide promotion from an earlier date, however, that was not considered or dealt with while rejecting the objections of the writ-petitioners.

86. At this juncture, it will be relevant to state that an order passed by an Executive Authority is to be tested on the basis of the reasons incorporated therein and the said order cannot be defended or justified by subplanting reasons at a subsequent stage.

87. In the aforesaid facts and circumstances where the objections regarding the date of promotion of the writ petitioners was raised by the persons belonging to the direct quota on 3 different occasions and after considerations, they were rejected by the State and never assailed by the aggrieved party before any court of law. After 7 years, now taking a ground that the writ-petitioners were granted promotion erroneously appears to be arbitrary, inasmuch as, this error, if at all, as stated by the State, was in their knowledge and it was considered on three different occasions from the year 2016 till the year 2022 and a positive stand was taken.

88. Now, what was that material which came to the notice of the State which persuaded it to take a different stand and what was considered just and right suddenly after 7 years became erroneous. The only submission regarding this aspect as made by the learned counsel for the State was that there is no power in the Rules which can confer promotion from a back date. This aspect has already been considered in the earlier paragraphs, hence, for the said reasons, it does not find favour with this Court.

89. Significantly, the law is now too well settled that an employer/an employee cannot be permitted to assail the issues relating to seniority after long durations. Moreover, in writ-jurisdiction when the Court exercises its powers of judicial review, it takes into account the decision making process and not only the merits of the decision itself.

90. As already noticed above, since the issue of the date of promotion of the writ-petitioners was considered by the State on 3 different occasions and having found itself to be satisfactory, the decision making process has been complete and it cannot be said that it was influenced by any extraneous considerations nor can it be said that any of the writ-petitioners had attempted to influence the said decision of the Committee constituted by the State on 3 occasions at different point of times which may create a suspicion on the decision making process.

91. Having said that this Court finds that the findings recorded by the learned Single Judge cannot be said to be arbitrary or against the material on record so as to take a different view than the one subscribed by the learned Single Judge. This Court while exercising its power as an Appellate Court, is not required to upturn a well reasoned order under challenge merely because another view may be possible unless the perversity in the order impugned can be pointed out.

92. As far as the decisions cited by the learned Additional Advocate General for the State is concerned, suffice to state that in **P. Sudhakar Rao (supra)**, the issue before the Apex Court was regarding the promulgation of the Rules with retrospective effect, however, the same does not in any manner deal with applicability of the Rules and making it applicable with retrospective effect. In the instant case, the redeeming feature is that the

Rules of 1991 do permit the State to provide promotion from an earlier date which is not akin to apply a Rule which comes into being at a later stage with retrospective effect, hence, the same does not aid the case of the appellants.

93. In **Narendra Singh (Supra)**, the facts of the said case are also quite at variance with the case in hand, inasmuch as, the issue before the Apex Court was regarding the grant of promotion in absence of adhering to the mandatory requirement as mentioned in the Rules. In the instant case, it is not the case of the State that the writ petitioners who were granted the promotion lacked any qualification for being considered for promotion, hence, the said case also does not help the appellant.

94. The State had also relied upon the decision of the Apex Court in **Dr. Amal Satpati (supra)** wherein the issue of grant of promotion from a retrospective date. From the perusal of the aforesaid decision, it would reveal that the Apex Court has reiterated the principle that as far as possible the safest way to determine the issue of promotion is on the date when the order is passed, however, the same has been made subject to any Rule governing the parties and in the instant case at hand the Rules of 1991 does create an exception and which is also reflected from the letter dated 27.06.2016, manifesting the intent which was evident, thereafter the order was passed specifically noticing that the promotion would take effect from 30.06.2016, hence, the said decision in **Dr. Amal Satpati (supra)** also does not come to the aid of the appellants.

95. This Court from the perusal of the decision rendered by the learned Single Judge finds that adequate reasons have been indicated to disapprove the contention of the State while passing the judgment and order dated 24.02.2025 corected vide order dated 28.02.025.

96. This Court is satisfied that the reasons recorded by the learned Single Judge does not suffer from any patent illegality which may persuade this Court to take any different view or to interfere with the judgment and order dated 24.02.2025 corrected vide order dated 28.02.2025, accordingly, both the intra-court appeals bearing No. **120 of 2025 (State of U.P. and Others v. Shiv Dutt Joshi and Others)** as well as Intra Court Appeal No. **122 of 2025 (Mukesh Pradhan & Another v. Sanjeev Kumar Sinha And 11 Others)** are **dismissed**. Costs are made easy.

Order Date :- 21st July, 2025

Asheesh/-

(Jaspreet Singh, J) (Arun Bhansali, CJ)