

HIGH COURT OF CHHATTISGARH, BILASPUR**Order reserved on 07-12-2017****Order delivered on 06-04-2018****WPS No. 1522 of 2017**

1. Parmanand Sai S/o Shri Ratan Sai, Aged About 58 Years Occupation Superintending Engineer (In-charge Chief Engineer), Planning, Office Of Engineer-in-Chief, Raipur, District Raipur, Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Public Works Department, Mahanadi Bhawan, Naya Raipur, Raipur, Chhattisgarh.
2. Chhattisgarh Public Service Commission, Shankar Nagar Road, Bhagat Singh Square, Raipur, District Raipur, Chhattisgarh.
3. J. M Lulu, Occupation Dy. Secretary, P W D, Mahanadi Bhawan, Naya Raipur, Raipur, Chhattisgarh.
4. A. K. Mandan, Occupation In-charge Chief Engineer, Office Of Chief Engineer, Raipur, District Raipur, Chhattisgarh.
5. P.M Kashyap, Occupation In-charge Superintending Engineer, Bastar Circle, Jagdalpur, District Bastar, Chhattisgarh.
6. M. L. Uraon, Occupation S. E. Bridge Circle, Ambikapur, District Surguja, Chhattisgarh.

---- Respondent**WPS No. 2548 of 2016**

1. Gyaneshwar Kashyap S/o Shri L Kashyap, Aged About 50 Years Presently Posted As Superintending Engineer Raipur, Chhattisgarh Public Works Department, No.2, Tehsil And District Raipur, Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Public Works Department, Mahanadi Bhavan, Naya Raipur, Raipur, Tehsil And District Raipur, Chhattisgarh.

---- Respondent**WPS No. 3665 of 2015**

1. Pandeshwar Sai S/o Shri J. Sai, Aged About 55 Years Currently Posted As Superintendent Engineer, Circle Kanker, District Kanker, Chhattisgarh.
2. Mohanlal Uraon, S/o Late Shri Sukhram Uraon, Aged About 46 Years Currently Posted As Superintendent Engineer, In Bridge Circle, Ambikapur, District Ambikapur, Chhattisgarh.
3. Gyaneshwar Kashyap, S/o Shri Sukhdev, Aged About 49 Years Currently Posted As Superintendent Engineer, Circle No.2, Raipur, District Raipur, Chhattisgarh.
4. Gopal Ram Rawte, S/o Late Shri Rohidas Rawte, Aged About 50 Years Currently Posted As Superintendent Engineer, National Highway Circle, Bilaspur, District Bilaspur, Chhattisgarh.

---- Petitioner**Versus**

1. State Of Chhattisgarh Through Secretary, Public Works Department, Mahanadi Bhawan, Mantralaya, New Raipur, Chhattisgarh.
2. Secretary, General Administration Department, Mahanadi Bhawan, Mantralaya, New Raipur, Chhattisgarh.
3. Chhattisgarh Public Service Commission, Through Its Chairman, Shankar Nagar Road, Bhagat Singh Square, Raipur, Chhattisgarh.
4. Engineer-In-Chief Public Works Department, Sirpur Bhawan, Raipur, Chhattisgarh.

---- Respondent**WPS No. 4403 of 2017**

1. Pandeshwar Sai S/o Shri Jadura Sai, Aged About 57 Years Presently Working As Superintending Engineer, Public Work Department, Kanker Circle, District Kanker Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Public Works Department, Mahanadi Bhawan, Naya Raipur, District Raipur Chhattisgarh.
2. Chhattisgarh Public Service Commission, Through The Secretary, Shankar Nagar Road, Bhagat Singh Square, Raipur, Chhattisgarh.
3. Shri D. K. Agrawal (C E), Project Director, Asian Development Bank, Office Of E-In-C, Public Work Department, Sirpur Bhawan, Raipur, District Raipur Chhattisgarh.
4. Shri J. M Lulu, (SE), Dy. Secretary Public Work Department, Mahanadi Bhawan, Naya Raipur, District Raipur Chhattisgarh.
5. Shri A. K. Mandan (SE), In-charge Chief Engineer, Office Of Chief Engineer, Public Work Department, Bilaspur, District Bilaspur Chhattisgarh.
6. Shri P. M. Kashyap (EE), In Charge Superintending Engineer, Technical Cell, Public Work Department, High Court Of Chhattisgarh, Bilaspur, District Bilaspur Chhattisgarh.
7. Shri M. L. Uraon, Superintending Engineer, Public Work Department, Bridge Circle Ambikapur, District Surguja Chhattisgarh.

---- Respondent

WPS No. 4951 of 2017

1. Gyaneshwar Kashyap S/o Shri Sukhdev Kashyap, Aged About 50 Years Presently Working As Superintending Engineer, Public Works Department, Circle - II , Raipur, District Raipur Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Public Works Department Mahanadi Bhawan, Naya Raipur District Raipur Chhattisgarh.
2. Chhattisgarh Public Service Commission, Through The Secretary, Shankar Nagar Road, Bhagat Singh Square, Raipur Chhattisgarh.

3. Shri D. K. Agrawal (CE), Project Director, Asian Development Bank, Office Of E-in-C, Public Works Department, Sirpur Bhawan, Raipur District Raipur Chhattisgarh.
4. Shri J. M. Lulu (SE), Dy. Secretary P. W. D., Mahanadi Bhawan, Naya Raipur, District Raipur Chhattisgarh.
5. Shri A. K. Mandan (SE), In - Charge Chief Engineer, Office Of Chief Engineer, Public Works Department, Bilaspur District Bilaspur Chhattisgarh.
6. Shri P.M. Kashyap (EE) In-Charge Superintending Engineer, Technical Cell, Public Works Department, High Court Of Chhattisgarh, Bilaspur District Bilaspur Chhattisgarh.
7. Shri M.L. Uraon, Superintending Engineer, Public Works Department, Bridge Circle Ambikapur, District Sarguja Chhattisgarh.

---- Respondent

WPS No. 5392 of 2017

1. Pankaj Mohan Kashyap S/o Shri Madan Mohan Kashyap, Aged About 48 Years R/o Executive Engineer, In-Charge, Superintending Engineer, Office Of Superintending Engineer, Public Works Department, High Court Technical Section, Bilaspur, District Bilaspur Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Department Of Public Works, Mantralaya Mahanadi Bhawan, New Raipur, District Raipur Chhattisgarh.
2. Engineer-In-Chief, Public Works Department, Sirpur Bhawan Raipur, District Raipur Chhattisgarh.

---- Respondent

WPS No. 6519 of 2014

1. Parmanand Sai S/o Shri Ratan Sai Aged About 55 Years Executive Engineer, N.H. Division No.2, Pensionbada, Raipur, PS Civil Lines, District Raipur, Chhattisgarh.

---- Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Public Works Department, Mahanadi Bhawan, Naya Raipur, Dist Raipur, Chhattisgarh
2. Chhattisgarh Public Service Commission Shankar Nagar Road, Bhagat Singh Square, Raipur, Dist Raipur, Chhattisgarh.
3. K.K. Pipri S/o Inderlal Pipri Aged About 50 Years R/o B-1, PWD Colony, Civil Lines, Raipur, Chhattisgarh Occupation Chief Engineer Bridge PWD, Distt Raipur, Chhattisgarh.
4. D.K. Agrawal Aged About 56 Years Working As Chief Engineer, National Highway, Pensionbada, Raipur, District : Raipur, Chhattisgarh
5. Pandeshwar Sai Aged About 54 Years Occupation S.E. Office Of E-In-C, Raipur.
6. Santosh Kumar Kohri Aged About 46 Years Occupation S.E. Bridge Circle, Raipur.
7. Vijay Kumar Bhartpahari S/o Ramlal Bhartpahari, Aged About 44 Years Working As Chief Engineer (Planning) Office Of The Engineer-In-Chief, Shirpur Bhawan, Raipur, Chhattisgarh.

---- Respondent

For respective petitioners :

Shri Saurabh Dangi, Shri Anup Mazumdar, Shri Harsh Wardhan, Shri Jitendra Pali & Shri Chandresh Shrivastava, Advocates

For Respondent/State :

Shri A.S. Kachhawaha, Addl. Adv. General

For Respondent/PSC :

Shri Ashish Shrivastava & Shri Sudeep Agrawal, Advocates

For respective private respondents :

Shri V.V.S. Murthy, Sr. Adv. Shri B.P. Sharma, Shri Sunil Otwani, Shri Sushil Dubey, Shri Prateek Sharma, Shri Manoj Paranjape & Shri K.R. Nair, Advocates

C A V Order**Prashant Kumar Mishra, J.**

1. The issue raised in this batch of writ petitions pertains to *inter se* seniority of contesting petitioners and the private respondents on the post of Executive Engineer and Superintending Engineer. Thus, all the petitions are considered and decided by this common order. However, for the sake of convenience the documents filed by the parties in WPS No. 1522 of 2017 shall be referred.
2. In the year 2003 all the petitioners and the private respondents were working as Assistant Engineer in the State of Chhattisgarh. The umbilical origin of the dispute commences on account of holding of Departmental Promotion Committee (hence forth 'the DPC') on 04.04.2003 wherein ad hoc promotion from the post of Assistant Engineer to Executive Engineer was considered for filling up 38 vacancies consisting of 13 clear vacancies; 6 vacancies falling vacant on account of promotion to next higher post (Executive Engineer to Superintending Engineer); anticipated vacancies on account of retirement of 2 Executive Engineers; and 17 vacancies on deputation post.
3. The select list was prepared including D.K. Agrawal, J.S. Lulu, Pankaj Mohan Kashyap, Mohan Lal Uraon & Gyaneshwar Kashyap. Recommendation pertaining to A.K. Mandan was kept in sealed

cover whereas that of Parmanand Sai, Pandeshwar Sai & Gopal Ram Rawte were kept in circulation. Pursuant to the DPC ad hoc promotion order was issued on 22.04.2003 promoting D.K. Agrawal, J.S. Lulu, V.K. Bhatpahari, P.M. Kashyap, M.L. Uraon & Gyaneshwar Kashyap. Thereafter, 5 other Assistant Engineers, including A.K. Mandan, were promoted on ad hoc basis with retrospective effect, in accordance with the original seniority, on the post of Executive Engineer, on 07.05.2003 (Annexure – R/3 to WPS No.4951 of 2017). In both the orders it was mentioned that the said ad hoc promotions shall be regularized in terms of the instructions dated 01.01.2002 issued by the General Administration Department of the State of Chhattisgarh (henceforth 'the GAD').

4. It would be apt to mention here that in the said DPC petitioner Parmanand Sai was not recommended for promotion. In both the ad hoc promotion orders it was also provided that those officers who are senior to the ad hoc promotees, whose case is kept for consideration by circulation on account of non availability of ACRs would be promoted in future and those against whom the departmental inquiry is pending, the recommendations of the DPC was kept in sealed envelope, to be opened after finalization of the departmental inquiry and if they have been found fit for promotion, they will be promoted. Since the name of the respondent No.4 A.K. Mandan was kept in sealed cover, he was later on promoted on

07.05.2003 along with 4 other Assistant Engineers with retrospective effect.

5. For regularization of the ad hoc promotion granted in the year 2003, two meetings of the DPC were convened by the PSC on the same date i.e. 20.12.2005. The DPC recommended to regularize the promotion of 8 candidates namely S.K. Mehta, Ashok Kumar Shukla, R.G Bhargav, V.K. Jain, D.K. Pradhan, R.B. Gangrulkar, Santosh Kumar Kori and Vijay Kumar Bhatpahari. Order for regularization of their ad hoc promotion was issued by the State Government on 17.10.2006 (Annexure R-4). In another DPC held on the same day recommendations were made for regularization of promotion of J.M. Lulu (Respondent No.3); A.K. Mandan (Respondent No.4); P.M. Kashyap (Respondent No.5); M.L. Uraon (Respondent No.6); and Gopal Ram Rawte (petitioner No.4 in WPS No. 3665 of 2015). Consequential order of regularization of ad hoc promotion in respect of these Officers was issued on 17.10.2006 (Annexure R-6). In both the orders they were accorded seniority from the date of their ad hoc promotion. In the DPC dated 20.12.2005 also petitioner Parmanand Sai was included in the zone of consideration, but on account of non availability of his ACRs, his case was kept under circulation.
6. In the year 2007 the State Government issued an order dated 13.07.2007 (Annexure R-7) granting seniority to D.K. Agrawal

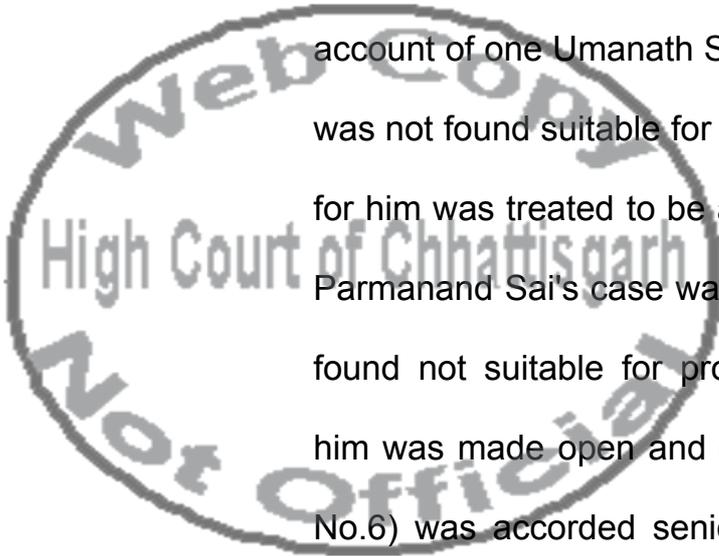
(Respondent No.3 in WPS No. 4403 of 2017) with effect from 2003 by mentioning that vacant post being not available in 2003, he was earlier allowed seniority from 2005, but recommendation of one candidate was kept in sealed cover on account of pendency of departmental inquiry against him in which he was eventually punished, therefore, the said post was treated to be vacant in the year 2003 against which D.K. Agrawal is allowed seniority from the year 2003.

7. The gradation list (Annexure R-8) of Executive Engineer (Civil) was issued on 25.07.2007 showing the seniority position as on 01.04.2005 in which D.K. Agrawal and Pandeshwar Sai were placed at S.Nos. 26 & 27, respectively whereas Vijay Kumar Bhatpahari, J.M. Lulu and A.K. Mandan were placed at S.Nos. 29, 30 & 31, respectively. Similarly, P.M. Kashyap, M.L. Uraon, Gyaneshwar Kashyap & Gopal Rawte were placed at S.r Nos. 41, 42, 44 & 45, respectively.

8. By another order dated 21.10.2008 (Annexure R-9) Respondent No.3 J.M. Lulu was accorded seniority from 2003 for the reason that name of one P.C. Jain was kept in sealed cover on account of pendency of criminal case against him, but since, thereafter, he has attained the age of superannuation on 30.04.2008, therefore, there is no justifiable reason for keeping one post vacant for him and this post was treated to be vacant in the year 2003 against which J.M.

Lulu was granted seniority. Similarly, one K.R. Dhrashyamkar was punished in the departmental inquiry and his sealed envelope was not opened, therefore, against vacancy reserved for Dhrashyamkar, P.M. Kashyap (Respondent No.5) was allowed seniority from 2003.

9. By another order dated 29.05.2009 (Annexure R-10) A.K. Mandan (Respondent No.4) was granted seniority from 2003 and was placed below J.M. Lulu (Respondent No.3) and above Pandeshwar Sai (Petitioner in WPS No. 4403 of 2017). This seniority was granted on account of one Umanath Sahay, whose case was kept in circulation, was not found suitable for promotion, therefore, the post kept vacant for him was treated to be available for promotion in 2003. Petitioner Parmanand Sai's case was also kept in circulation, but was later on found not suitable for promotion, therefore, vacancy reserved for him was made open and on this vacancy M.L. Uraon (Respondent No.6) was accorded seniority from 2003. Similar is the case with Gyaneshwar Kashyap (Petitioner in WPS No. 2548 of 2016), who was granted seniority from 2003, as one D.Ram's case was kept in circulation, but was subsequently found unsuitable for promotion.
10. On 09.01.2009 (Annexure R-11), the Department of Public Work sought guidance from the GAD as to the date of seniority to be accorded to the ad hoc promotees. The GAD, in turn, replied (part of Annexure R-11 itself) that as per clause 3 (ख) of GAD circular dated 09.01.2004 pertaining to regularization of ad hoc promotion, if the



ad hoc promotees are subsequently found fit in the regular DPC and since they were promoted on account of post being available in the higher/promoted cadre, they are to be accorded seniority on the promotion post from the date of ad hoc promotion.

11. The DPC was convened on 05.09.2007 (Annexure R-12) for considering promotion from the post of Executive Engineer (Civil) to the post of Superintending Engineer (Civil) in which Pandeshwar Sai was found unsuitable for promotion on the post of Superintending Engineer. On account of grant of seniority to J.M. Lulu, A.K. Mandan, P.M. Kashyap, M.L. Uraon & Gyaneshwar Kashyap from the year 2003, seniority list showing the seniority on the post of Executive Engineer as on 01.04.2004 was required to be revised, therefore, the revised gradation list of Executive Engineer as on 01.04.2004 was issued on 06.08.2010 (Annexure R-13).
12. In the departmental inquiry against Parmanand Sai, he was visited with the penalty of 'censure', therefore, he was not promoted on the post of Executive Engineer in the year 2003 or 2005, however, vide department's order dated 22.08.2012 the penalty of 'censure' was set aside and instead the petitioner Parmanand Sai was let off with a warning that he should not repeat the mistake in future. Consequently, his case for promotion was considered in September, 2013 and was promoted with effect from the year 2003.

13. It would be apt to mention here that in the DPC for ad hoc promotion held on 04.04.2003, petitioner Parmanand Sai's name was kept for consideration by circulation as his ACRs were not available. In the DPC dated 20.12.2005 also for considering regularization of ad hoc promotion, his case was again kept for consideration in circulation. Thus, in both the DPCs it was never mentioned that his case was kept in sealed cover on account of pendency of departmental inquiry.

14. The State Government vide order dated 01.02.2014 (Annexure P-3) promoted the petitioner Parmanand Sai on the post of Executive Engineer retrospectively with effect from the year 2003 and was, thereafter, treated to have been regularized in the DPC dated 20.12.2005 and as a consequence it was also directed that his name be placed above Pandeshwar Sai in the gradation list of Executive Engineers. It is, thus, apparent that petitioner Parmanand Sai's name was never recommended by the PSC for regularization of ad hoc promotion.

15. Petitioner Parmanand Sai in his earlier petition i.e. WPS No. 6519 of 2014 prayed for grant of seniority on the post of Executive Engineer above Pandeshwar Sai and to conduct DPC for promotion on the post of Superintending Engineer as also for conduct of inquiry for irregular promotion made by the DPC in view of the State Government's order dated 01.02.2014 (Annexure P-3 to WPS No.

1522 of 2017) the main relief prayed in WPS No. 6519 of 2014 has been rendered infructuous. Similarly, petitioner Parmanand Sai having already been promoted as Superintending Engineer and is presently working as In-charge Chief Engineer, the second relief to conduct review DPC for promoting him on the post of Superintending Engineer has also become infructuous.

16. On account of the order dated 01.02.2014 promoting the petitioner Parmanand Sai as Executive Engineer with effect from the year 2003 the department issued another revised gradation list of Executive Engineers on 05.03.2016 (Annexure R-14) showing the seniority position as on 01.04.2004. In this gradation list the following was the placement :

- D.K. Agrawal (S.No.34)
- J.M. Lulu (S.No.35)
- A.K. Mandan (S.No.36)
- Parmanand Sai (S.No.36A)
- Pandeshwar Sai (S.No.37)
- P.M. Kashyap (S.No.38)
- M.L. Uraon (S.No.39).

17. The department issued another gradation list on the same day i.e. 05.03.2016 (Annexure P-4) showing the seniority position of the Executive Engineers as on 01.04.2005.



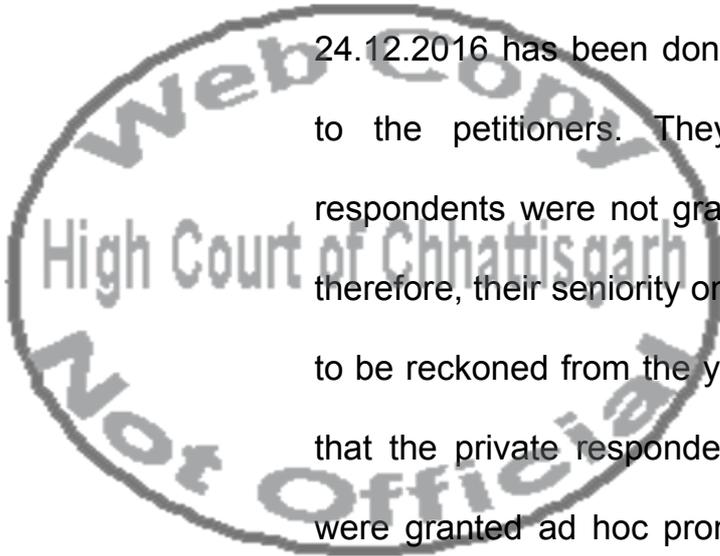
18. It appears, the PSC wrote a letter to the department on 06.12.2017 seeking clarification as to the seniority position of the candidates on the post of Executive Engineer, to which the department replied on 22.03.2017 (Annexure R-15) mentioning that in the gradation list issued on 05.03.2016 showing the seniority position as on 01.04.2005 names of J.M. Lulu & A.K. Mandan were placed below Parmanand Sai and 4 other Executive Engineers. However, another revised seniority list was already issued on 06.08.2010, therefore, gradation list issued on 05.03.2016 showing the seniority position as on 01.04.2005 was required to be suitably amended, as such, after complete examination revised gradation list has been issued on 24.12.2016 showing the seniority position as on 01.04.2005, further mentioning that seniority allowed to D.K. Agrawal, J.M. Lulu, A.K. Mandan, M.L. Uraon and P.M. Kashyap from the year 2003 is in accordance with the State Government's orders dated 13.07.2007, 21.10.2008 & 29.05.2009, as the same is in accordance with clause 3 (ख) of the GAD circular dated 09.01.2004 relating to regularization of ad hoc promotion to which the GAD has also accorded its approval vide its note sheet (Part of Annexure R-11). The department, thereafter, requested the PSC to hold the review DPC of DPC dated 05.09.2007 for consideration of promotion from the post of Executive Engineer to the post of Superintending Engineer.

19. In the above factual matrix, the petitioners have sought quashment of the impugned communication/proceedings dated 12.01.2017 drawn by the PWD and the CGPSC for holding review DPC of the DPC held in 2007 for promotion from the post of Executive Engineer to Superintending Engineer; for a command to correct the seniority/gradation list of Executive Engineer as on 01.04.2005 and place the petitioner Parmanand Sai in the same position as he was placed in the earlier gradation list issued on 05.03.2016; as also for quashment of the orders passed by the State Government on 13.07.2007, 21.10.2008 and 29.05.2009 together with all consequential promotion orders on account of according seniority to the private respondents from the year 2003. The petitioners have also sought for a direction to the respondents to conduct DPC for reserved post of ST category in the cadre of Chief Engineer (PWD) and to consider cases of the respective petitioners belonging to the ST category on the said post. Petitioner Gyaneshwar Kashyap is seeking quashment of the order dated 19.01.2016 and to grant seniority w.e.f. 2003 instead of 2005.

20. It is argued by the learned counsel appearing for the respective petitioners that the ad hoc promotion of private respondents were regularised w.e.f. 20.12.2005, therefore, they could not have been granted seniority w.e.f. the year 2003 and, as such, they should have been placed below the petitioner Parmanand Sai in the

gradation list of Executive Engineers as on 01.04.2005, which was rightly done in the gradation list issued on 05.03.2016, however, this was wrongly amended to the detriment of Parmanand Sai on 24.12.2016 downgrading him from the position of 26A to 28A and the respondents No.3 & 4 J.M. Lulu & A.K. Mandan were placed above him at S.No.27 & 28, respectively.

21. Learned counsel appearing for the respective petitioners would further argue that the said revision of gradation list made on 24.12.2016 has been done without affording opportunity of hearing to the petitioners. They would also argue that the private respondents were not granted ad hoc promotion in the year 2003, therefore, their seniority on the post of Executive Engineer ought not to be reckoned from the year 2003. It is the case of the petitioners that the private respondents No.3 to 6 in WPS No.1522 of 2017 were granted ad hoc promotion only in the year 2005, which was later on regularised by the PSC in the DPC dated 20.12.2005, therefore, their seniority from 2003 was never considered by the PSC and, as such, according seniority to them from 2003 is manifestly illegal.
22. Learned counsel would next argue that if the private respondents in WPS No.1522 of 2017 are not accorded seniority from 2003 they would not be completing the minimum service of 4 years as Executive Engineer for being promoted to the next higher post of



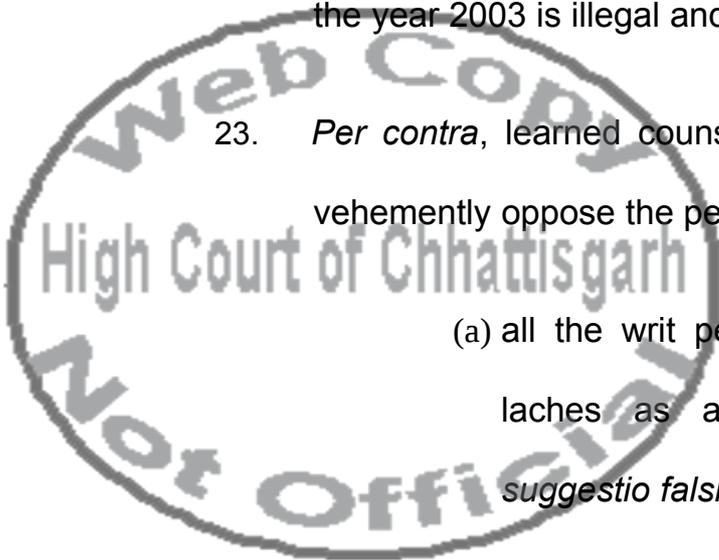
Superintending Engineer and, thus, the contemplated action vide Annexure – P/1 to convene review DPC of DPC dated 05.09.2007 is proposed only with a view to benefit the private respondents because if their seniority is reckoned from 2003 they would be completing 4 years service as Executive Engineer on 05.09.2007. Petitioners would also argue that for the above said reasons, the orders issued by the State Government on 13.07.2007, 21.10.2008 and 29.05.2009 according seniority to the private respondents from the year 2003 is illegal and void.

23. *Per contra*, learned counsel appearing for the respondents would vehemently oppose the petitions on submission that :

(a) all the writ petitions suffer from unexplained delay & laches as also suffer from *suppressio veri and suggestio falsi*;

(b) petitioner Parmanand Sai has no locus to challenge the promotion of the private respondents, as he himself was promoted in the year 2014 because from 2003 to 2014 he was not promoted on account of he having suffered punishment in the departmental enquiry or due to non-availability of ACRs;

(c) Petitioner Parmanand Sai having himself being promoted and accorded seniority from the year 2003



vide order dated 01.02.2014, without concurrence of the PSC, it is not open for him to challenge the orders dated 13.07.2007, 21.10.2008 and 29.05.2009 granting seniority to the private respondents from 2003.

(d) in service jurisprudence seniority settled by the Department should not be disturbed after long lapse of time; and

(e) in view of para 3 (ख) of the GAD circular dated 09.01.2004 (Annexure R2/1 of the PSC's additional return), the private respondents are entitled for seniority from the date of their ad hoc promotion.

24. The main ground of challenge thrown by the petitioners assailing the grant of seniority to the private respondents from the year 2003 is on the footing that the private respondents were never promoted on ad hoc basis in the year 2003 and their ad hoc promotion was made in the year 2005.

25. In the writ petitions, the petitioners have only stated that in the DPC dated 20.12.2005 the private respondents ad hoc promotion made in the year 2005 was regularized, therefore, they cannot be granted seniority from 2003. In WPS No.1522 of 2017, the respondent/State has not filed any order by which the private respondents were promoted on ad hoc basis in the year 2005, however, in WPS

No.4951 of 2017 the State has filed document Annexure R-3 dated 07.05.2003 whereby respondent A.K. Mandan was promoted on ad hoc basis. It is not disputed that the respondent No.3 J.M. Lulu, respondent No.5 P.M. Kashyap and respondent No.6 M.L. Uraon were also promoted on ad hoc basis vide order dated 22.04.2003. Thus, all the private respondents were granted ad hoc promotion in the year 2003.

26. In the GAD circular dated 09.01.2004 it is provided in para 3 (ख) that such Government servants who were promoted on ad hoc basis are subsequently promoted on regular basis, the effective date of their regular promotion shall be the date on which they were promoted on ad hoc basis. Meaning thereby that if ad hoc promotion has been granted to an employee or officer and he was not suffering from any disqualification on the said date and was subsequently found to be fit and suitable for regular promotion whenever the DPC was convened, the date of ad hoc promotion would be the effective date for regular promotion.

27. In the case at hand, the subject mentioned in the DPC proceeding dated 20.12.2005 is mentioned as regularization of ad hoc promotion made in the year 2005 and on this basis the petitioners contend that the ad hoc promotion of the private respondents made in the year 2005 was regularized vide Annexure R-5, therefore, they cannot be accorded seniority from the year 2003. However, the

subject mentioned in the DPC proceeding is factually incorrect, as there is no order on record by which any ad hoc promotion was granted to the private respondents in the year 2005. As earlier stated, the private respondents have been granted ad hoc promotion on 22.04.2003 (Annexure R-2) and 07.05.2003 (Annexure R-3 in WPS No.4951 of 2017). It is precisely for this reason, the order of regularization issued in favour of the private respondents, amongst other Engineers, would mention that their ad hoc promotion is regularized from the date they assumed the office on the promotional post on the basis of ad hoc promotion. This is clearly mentioned in Annexure R-4 and Annexure R-6. In Annexure R-6 the date of promotion of the Officers is mentioned in Column 3 as the year 2005, however, the same is in direct conflict with the actual order of ad hoc promotion issued in their favour on 22.04.2003 and 07.05.2003.

28. None of the parties have filed any document on record by which the private respondents were promoted on ad hoc basis in the year 2005. For this reason alone, the ground urged by the petitioners that the private respondents were never promoted on ad hoc basis in the year 2003 is contrary to the order issued by the State Government. Thus, this ground of challenge deserves to be and is hereby rejected.

29. Some of the petitioners have called in question the orders passed by the State Government on 13.07.2007, 21.10.2008 & 29.05.2009 by which the private respondents have been granted seniority from 2003. In addition to what is discussed in the just preceding paragraphs, it is also to be seen that by the above three orders under challenge the private respondents were allowed seniority from 2003 on the ground that the posts were kept vacant for some other candidates on account of their cases having been deferred for consideration in circulation or in sealed cover due to pendency of departmental inquiry, however, when such Engineers were found incapable of being promoted in the year 2003, the posts kept reserved for them were treated to have fallen vacant in the year 2003 itself and on the said post the private respondents have been granted seniority from 2003, which has never been called in question by any of the petitioners prior to the year 2014. The petitions, on this count, are, thus, highly delayed, as the seniority accorded to the private respondents about 7-8 years back is now sought to be questioned by filing the present writ petitions.

30. It is the well settled proposition of law that long standing seniority should not be disturbed and writ petitions should not be entertained after long lapse of time. Way back the Supreme Court in **P.S. Sadasivaswamy v State of Tamil Nadu**¹, held that the petition filed after lapse of fourteen years challenging the promotion would

1 (1975) 1 SCC 152

amount to agitating a stale claim and the aggrieved person must approach the Court expeditiously for relief and it is not permissible to put forward stale claim. A person aggrieved by an order promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. Even if the present is a case assailing the seniority list, but the principle would remain the same that when seniority to private respondents has been accorded by different orders dated 13.07.2007, 21.10.2008 & 29.05.2009 challenge to the same is not at all permissible after 6-7 years.

31. In **Dayaram Asanand Gursahani v State of Maharashtra and Others**², the Supreme Court held that in absence of satisfactory explanation for inordinate delay of 8-9 years in questioning under Article 226 of the Constitution, the validity of the seniority and promotion assigned to other employee could not be entertained.

32. The Supreme Court in **K.R. Mudgal and Others v R.P. Singh and Others**³, observed that a government servant who is appointed to any post ordinarily should at least after a period of 3 or 4 years of his appointment be allowed to attend to the duties attached to his post peacefully and without any sense of insecurity. Satisfactory service conditions postulate that there should be no sense of uncertainty amongst the Government servants created by writ

2 (1984) 3 SCC 36

3 (1986) 4 SCC 531

petitions filed after several years as in this case. It is essential that any one who feels aggrieved by the seniority assigned to him, should approach the Court as early as possible as otherwise in addition to the creation of a sense of insecurity in the minds of the Government servants there would also be administrative complications and difficulties. In these circumstances, we consider that the High Court was wrong in rejecting the preliminary objection raised on behalf of the respondents to the writ petition on the ground of laches.

33. In **K.R. Mudgal** (supra) the Supreme Court referred to its earlier decision rendered in **Malcom Lawrence Cecil D'Souza v Union of India and Others**⁴, wherein the following has been laid down in para 9 :

9. Although security of service cannot be used as a shield against the administrative action for lapses of a public servant, by and large one of the essential requirements of contentment and efficiency in public services is a feeling of security. It is difficult no doubt to guarantee such security in all its varied aspects, it should at least be possible to ensure that matters like one's position in the seniority list after having been settled for once should not be liable to be reopened after lapse of many years at the instance of a party who has during the intervening period chosen to keep quiet. Raking up old matters like seniority after a long time is likely to result in administrative complications and difficulties. It would, therefore, appear to be in the interest of smoothness and efficiency of service that such matters should be

4 (1976) 1 SCC 599

given a quietus after lapse of some time."

34. Following the above judgments, the Supreme Court in **Shiba Shankar Mohapatra and Others v State of Orissa and Others**⁵ held that even though there was no any period of limitation for the Courts to exercise their powers under Article 226 nor was it that there could never be a case where the Courts cannot interfere in a matter after certain length of time. It would be a sound and wise exercise of jurisdiction for the Courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put forward stale claim and try to unsettle settled matters. The Supreme Court also referred the decisions rendered in **Smt. Sudama Devi v Commissioner and Others**⁶, **State of U.P. and Others v Raj Bahadur Singh and Another**⁷ and **Northern Indian Glass Industries v. Jaswant Singh and Others**⁸.
35. Referring to the decision rendered in **Dinkar Anna Patil and Another v State of Maharashtra and Others**⁹, it was reiterated by the Supreme Court in **Shiba Shankar Mohapatra** (supra) that delay and laches in challenging the seniority is always fatal and that fence-sitters cannot be allowed to raise the dispute or challenge the

5 (2010) 12 SCC 471

6 (1983) 2 SCC 1

7 (1998) 8 SCC 685

8 (2003) 1 SCC 335

9 (1999) 1 SCC 354

validity of the order after its conclusion. No party can claim the relief as a matter of right as one of the grounds for refusing relief is that the person approaching the Court is guilty of delay and the laches. The Court exercising public law jurisdiction does not encourage agitation of stale claims where the right of third parties crystallises in the interregnum.

36. Concluding the issue, the Supreme Court in **Shiba Shankar Mohapatra** (supra) held thus in para 30 :

30. Thus, in view of the above, the settled legal proposition that emerges is that once the seniority had been fixed and it remains in existence for a reasonable period, any challenge to the same should not be entertained. In *K.R. Mudgal* (supra), this Court has laid down, in crystal clear words that a seniority list which remains in existence for 3 to 4 years unchallenged, should not be disturbed. Thus, 3-4 years is a reasonable period for challenging the seniority and in case someone agitates the issue of seniority beyond this period, he has to explain the delay and laches in approaching the adjudicatory forum, by furnishing satisfactory explanation.

37. In **P. Sudhakar Rao and Others v U. Govinda Rao and Others**¹⁰, the Supreme Court has held that seniority amongst members of the same grade must be counted from the date of their initial entry into the grade and that retrospective seniority cannot be given to an employee from a date when he was not even borne in the cadre.

¹⁰ (2013) 8 SCC 693

38. In the case at hand, the private respondents were born in the feeder cadre on 22.04.2003 & 07.05.2003 when they were promoted on ad hoc basis, which was subsequently regularised albeit wrongly mentioning that they were promoted on ad hoc basis in 2005. It is, therefore, not a case where the private respondents have been accorded seniority from any date on which they were not born in the cadre. Their seniority has rightly been fixed by the impugned orders from the date of their initial entry into the cadre by way of ad hoc promotion, which is permissible in view of the GAD's circular dated 09.01.2004.

39. It is vehemently argued by referring the decision of the Supreme Court rendered in **Union of India and another v P.K. Roy and others**¹¹ that when seniority list was published on 05.03.2016 in which the petitioner Parmanand Sai was placed above J.M. Lulu and A.K. Mandan, the same could not be revised by issuing the fresh gradation list on 24.12.2016 without affording opportunity of hearing to the petitioner Parmanand Sai.

40. In **P.K. Roy** (supra) the Supreme Court was considering the scheme of allocation of services of personnel to various successor States under the States Reorganisation Act, 1956. By issuing various circulars norms were notified which would govern the seniority of the officers in one or the other States. In that case, the operation of the

11 AIR 1968 SC 850

gradation list, under challenge, was benefiting some of the officers who were not selected by the PSC inasmuch as they were made senior to those selected by the PSC. The Central Government issued a communication to the State Government that the procedure prescribed in previous notification on the subject should be applied to carry out necessary changes in the combined gradation list. The exercise undertaken by the State Government was in pursuance to the Central Government's dictate, but that was done without giving any opportunity of hearing to the effected candidates. The Supreme Court observed that the final gradation list could have been prepared on the basis of the principle agreed upon in the conference of the Chief Secretaries both on the method of "kicking down" and the alternative method of "kicking up".

41. The Supreme Court further observed that the extent and application of the doctrine of natural justice cannot be imprisoned within the straitjacket of a rigid formula. The application of the doctrine depends upon the nature of the jurisdiction conferred on the administrative authority, upon the character of the rights of the persons affected, the scheme and policy of the statute and other relevant circumstances disclosed in the particular case. Reference was made to **Lala Shri Bhagwan and another v Ram Chand and another**¹². The Supreme Court, thereafter, held, thus, in para 11 :

12 AIR 1965 SC 1767

“11.....In view of the special circumstances of the present case we think that the respondents were entitled to an opportunity to make a representation with regard to the two points urged by Mr. Asoke Sen before the final gradation list was published. As no such opportunity was furnished to the respondents with regard to these two matters we hold that the combined final gradation list dated April 6, 1962, so far as category 6 is concerned, is ultra vires and illegal and that part of the notification alone must be quashed by grant of a writ in the nature of certiorari. The rest of the notification of the State Government dated April 6, 1962 with regard to other categories will stand unaffected. So far as category No.6 is concerned, the Central Government is directed to give an opportunity to the respondents to make a representation in regard to the two points mentioned in this paragraph and thereafter take steps to finalise and publish the list in accordance with law.”

(Emphasis added)

42. It is, thus, manifest that there was violation of statutory provisions as well as the Central Government's notifications issued under the States Reorganization Act pertaining to allocation of the services of the employees and Officers. The premises on which the Supreme Court treated the matter to be a special circumstance to afford opportunity of hearing is not present in the case at hand. Here, this Court is faced with a pure and simple matter as to whether the private respondents were rightly accorded seniority from 2003 by passing the orders dated 13.07.2007, 21.10.2008 & 29.05.2009 and in view of the GAD circular dated 09.01.2004; it was not such a complex issue like the one falling for consideration before the Supreme Court. Moreover, the petitioners have not demonstrated

before this Court as to what statutory right of theirs has been violated while issuing the revised gradation list on 24.12.2016 which finds its basis in the three orders issued on 13.07.2007, 21.10.2008 & 29.05.2009, which were never assailed by the petitioners prior to 2014.

43. The petitioners appear to be fence-sitters and are interested in creating chaos and continuing the litigation in the department so that they continue to derive benefit of enjoying officiating charge of one or the other higher office.

44. When a stale claim is agitated and an effort is made to unsettle the settled position, the Supreme Court has observed in **H.S. Vankani and Others v State of Gujarat and Others**¹³, at para 38, as under :

38. Seniority is a civil right which has an important and vital role to play in one's service career. Future promotion of a Government servant depends either on strict seniority or on the basis of seniority-cum-merit or merit-cum-seniority etc. Seniority once settled is decisive in the upward march in one's chosen work or calling and gives certainty and assurance and boosts the morale to do quality work. It instills confidence, spreads harmony and commands respect among colleagues which is a paramount factor for good and sound administration. If the settled seniority at the instance of one's junior in service is unsettled, it may generate bitterness, resentment, hostility among the Government servants and the enthusiasm to do quality work might be lost. Such a situation may drive the

13 (2010) 4 SCC 301

parties to approach the administration for resolution of that acrimonious and poignant situation, which may consume lot of time and energy. The decision either way may drive the parties to litigative wilderness to the advantage of legal professionals both private and Government, driving the parties to acute penury. It is well known that salary they earn, may not match the litigation expenses and professional fees and may at times drive the parties to other sources of money making, including corruption. Public money is also being spent by the Government to defend their otherwise untenable stand. Further it also consumes lot of judicial time from the lowest court to the highest resulting in constant bitterness among parties at the cost of sound administration affecting public interest.

45. It is also argued that the private respondents have been granted seniority without concurrence of the CGPSC, therefore, it is without jurisdiction and cannot enure to the benefit of the private respondents. The petitioner Parmanand Sai, possibly, cannot be allowed to raise this argument, as he stands on the same footing inasmuch as his case was deferred for promotion in 2003 and 2005 and later on he was not found fit for promotion as he was visited with penalty of censure, but subsequently he was granted promotion on 01.02.2014 without concurrence of the PSC. Thus, the petitioner is sailing in the same boat. Having availed the benefit of the order dated 01.02.2014 the petitioner Parmanand Sai cannot be allowed to argue contrary to the procedure of which he himself is the beneficiary.

46. On this issue, it would be apt to refer to the principle laid down by the Supreme Court in **State of Punjab and Others v Dhanjit Singh Sandhu**¹⁴ that the doctrine of election is based on the rule of estoppel, the principle that one cannot approbate and reprobate inherent in it. By this law, a person may be precluded, by way of his actions, or conduct or silence when it is his duty to speak, from asserting a right which he would have otherwise had. The doctrine of 'approbate and reprobate' is only a species of estoppel, it implies only to the conduct of parties. It is the settled proposition of law that once an order has been passed, it is complied with, accepted by the other party and he derived the benefit out of it, he cannot challenge it on any ground.
47. Even if the petitioner Parmanand Sai is not challenging the order dated 01.02.2014 of which he is a beneficiary, the private respondents having accorded seniority in the same manner as was granted to the petitioner, if the seniority of private respondents is under cloud, as alleged by the petitioners, retrospective seniority granted to the petitioner would also illegal.
48. It requires mention that in WPS No.6519 of 2014 petitioner Parmanand Sai is claiming seniority over Pandeshwar Sai, but not against J.M. Lulu, A.K. Mandan or P.M. Kashyap even though on this date the State Government had already issued the orders dated

14 (2014) 15 SCC 144

13.07.2007, 21.10.2008 & 29.05.2009 allowing these three persons seniority from 2003. It is for this reason also the subsequent petition filed by Parmanand Sai not only suffers from delay and laches but he has practically abandoned the relief claiming seniority over and above J.M. Lulu, A.K. Mandan and P.M. Kashyap by not challenging the same in his previous petition i.e. WPS No.6519 of 2014.

49. This Court is convinced with the submission made by the respondents that in service matters the averment and the relief claimed should be specifically corresponding to any statutory or constitutional right to claim seniority, however, the petitioners have not shown the basis as to how they would be senior to the private respondents who have been granted seniority with effect from the year 2003.

50. Indisputably, as on 01.04.2001, the private respondents namely; D.K. Agrawal, J.M. Lulu & A.K. Mandan were senior to all the petitioners, as they were placed at S.Nos.28, 29 & 30, respectively whereas Parmanand Sai & Pandeshwar Sai were at S.Nos.87 & 88, respectively. P.M. Kashyap & M.L. Uraon were at S.Nos.108 & 109, respectively. Similarly, Gyaneshwar Kashyap & Gopal Ram Rawte were at S.Nos.114 & 115, respectively.

51. Pandeshwar Sai, Gyaneshwar Kashyap & Gopal Ram Rawte have preferred writ petition for conducting the DPC for promotion to the post of Chief Engineer, as also claiming seniority above the private

respondents, by seeking quashment of the orders dated 13.07.2007, 21.10.2008 & 29.05.2009. Considering the seniority position of the parties in the feeder cadre, it is not a case where the petitioners have been superseded in the matter of promotion from the post of Assistant Engineer to the post of Executive Engineer.

52. Private respondents D.K. Agrawal, J.M. Lulu & A.K. Mandan have been granted seniority from 2003, i.e. from the date of their ad hoc promotion, as the posts reserved for other candidates fell vacant for the reasons mentioned in the preceding paragraphs. Thus, it is not a case where without the posts being available they have been granted regular promotion from 2003 by regularizing their ad hoc promotion.

53. The PSC has not come forward with any reason, much less any justifiable reason as to why two DPCs were conducted on the same date i.e. 20.12.2005 for considering promotion to the same post.

54. Even if it is assumed that in the first DPC for regularization of ad hoc promotion of 2003 only such numbers of Executive Engineers were regularised in proportion of the posts which were vacant in the year 2003 and the rest were regularised from 2005, the State Government having assigned the reasons in the orders dated 13.07.2007, 21.10.2008 & 29.05.2009 as to how the posts, which were kept vacant for other candidates, were subsequently available for granting promotion/seniority/regularisation of ad hoc promotion

of the private respondents from the year 2003, no case is made out to set aside the orders granting seniority to the private respondents from the year 2003.

55. As a matter of fact, if the orders dated 13.07.2007, 21.10.2008 & 29.05.2009 are quashed and the private respondents are not allowed seniority from 2003 it will amount to their supersession in the matter of promotion because the petitioner Parmanand Sai being junior to them in the feeder cadre of Assistant Engineer would enjoy seniority as Executive Engineer from 2003, adversely affecting the seniority and promotion of the private respondents. If the orders passed in favour of the private reasons are quashed, it will occasion injustice to them. It is the settled law that writ Court does not pass any order violating the provisions of Articles 14 & 16 of the Constitution.

56. In the facts and circumstances of the case, when the original record made available to the Court does not contain any ad hoc promotion of the private respondents made in the year 2005, the only ad hoc promotion made in their favour having made in the year 2003, reference to the regularization of ad hoc promotion of 2005 appears to be mistake.

57. It is trite law that while exercising the power under Article 226 of the Constitution of India the Courts should consider the substance of the matter rather than mere form or technicality, which may have

occasioned on account of some mistake. (See: the decision of the Supreme Court in **Pratap Singh v Shri Krishna Gupta and Others**¹⁵ and the decision of this Court in **Mahendra Singh v. Municipal Corporation & Another**¹⁶).

58. For the foregoing, all the writ petitions are disposed of in the following manner :

(a) I have no hesitation in holding that the petitioners have not made out any case for quashing the orders dated 13.07.2007, 21.10.2008 & 29.05.2009 passed by the State Government according seniority to the private respondents from the year 2003 when they were promoted on ad hoc basis and the post fell vacant on account of those, for whom the posts were kept vacant, were found unsuitable for promotion in the year 2003.

(b) Similarly, challenge to the revised seniority list issued on 24.12.2016 showing the seniority position in the cadre of Executive Engineer as on 01.04.2005 on the basis of seniority accorded to the private respondents on the post of Executive Engineer from the year 2003, does not suffer from any illegality or arbitrariness, therefore, challenge to this revised seniority list also deserves to be and is hereby rejected.

(c) The impugned orders have been found to be justified being in conformity with the settled legal position.

¹⁵ AIR 1956 SC 140

¹⁶ WP 227 No.837 of 2014 (decided on 2-8-2016)

- (d) Prayer made in WPS No.6519 of 2014 for holding enquiry against the erring personnel is also refused.
- (e) As a consequence, challenge to the proceedings drawn by the PWD and the PSC vide Annexure – P/1 in WPS No.1522 of 2017 initiating process to hold the review DPC for the DPC dated 05.09.2007 for promotion from the post of Executive Engineer (Civil) to the post of Superintending Engineer (Civil) does not suffer from any illegality or irregularity and, as such, challenge to this proceeding also fails and is rejected.

- (f) In some of the petitions candidates belonging to the Scheduled Tribe category have prayed for a direction to the PWD and the PSC to hold the DPC for promotion for the vacant post of Chief Engineer under the ST category. These petitions are disposed of with the observation that after holding the review DPC of the DPC dated 05.09.2007 for promotion from the post of Executive Engineer to the post of Superintending Engineer, the respondent authorities shall proceed in accordance with law to hold the DPC for making promotion to the next higher post i.e. Chief Engineer.

59. Ordered accordingly. Parties shall bear their own cost(s).

Sd/-
Judge
Prashant Kumar Mishra

Gowri