



2025:CGHC:4468-DB

AFR**HIGH COURT OF CHHATTISGARH AT BILASPUR****WA No. 616 of 2024**

1 - Anuj Sharma S/o Late P.L. Sharma Aged About 57 Years Presently Working In Office of Executive Engineer, P.W.D., Gariyaband, District Gariyaband, Chhattisgarh.

2 - Prabhat Kumar Saxena S/o Late B.L. Saxena Aged About 53 Years Presently Working In Office of Sub Divisional Office, P.W.D. Raipur, District Raipur Chhattisgarh.

3 - Devnarayan Verma S/o Late B.L. Saxena Aged About 59 Years Presently Working In Office of Sub Divisional Officer, P.W.D.(Building And Roads), Raipur, District Raipur Chhattisgarh.

4 - Pradeep Kumar Gupta S/o Late Dr. Vishwanath Prasad Gupta Aged About 59 Years Presently Working As Assistant Engineer Office of Project Manager A.D.B Project Chhattisgarh State Road Sector Project P.W.D. Campus, Sikola Bhata, Durg, District Durg Chhattisgarh.

... Appellants**versus**

1 - State of Chhattisgarh Through The Secretary, Public Works Department, Mantralaya, Nawa Raipur, District Raipur Chhattisgarh.

2 - Engineer In Chief Public Works Department, Nirman Bhawan, Atal Nagar, Raipur, District Raipur Chhattisgarh.

3 - Mamta Patel W/o Shri Bajrang Patel Aged About 43 Years R/o A-107, Shiddh Shikhar Vistar, New Nagar, Bilaspur, District Bilaspur Chhattisgarh.



- 4** - Priyanka Mehta W/o Shri Amit Pandey Aged About 35 Years R/o H. No. 202/ A-3, Shivam Residency, Shanti Nagar, Bilaspur, District Bilaspur Chhattisgarh.
- 5** - Ramesh Kumar Verma S/o P.L. Verma Aged About 45 Years R/o F-4 Irrigation Colony Jagdalla, Champa, District Janjgir Champa Chhattisgarh.
- 6** - Amit Kashyap S/o Shri R. N. Kashyap Aged About 44 Years R/o Near Nandu Garage, Telipara, Bilaspur, District Bilaspur Chhattisgarh.
- 7** - Rajendra Kumar Sonkar S/o Shri S.R. Sonkar Aged About 44 Years R/o Village Kolyari, District Dhamtari Chhattisgarh.
- 8** - Vishal Trivedi S/o Satya Narayan Trivedi Aged About 36 Years R/o F-3 P.W.D. Colony, Katora Talab Raipur District Raipur Chhattisgarh.
- 9** - Abhinav Shrivastava S/o Shri K. K. Shrivastava Aged About 41 Years R/o G13, P.W.D. Colony, Byron Bazar, Raipur District Raipur Chhattisgarh.
- 10** - Neeta Ramteke W/o Ramchandra Ramteke Aged About 39 Years R/o Happy Homes Colony, Mahavir Nagar, Raipur District Raipur Chhattisgarh.
- 11** - Santosh Kumar Gupta S/o Late Shri S.P. Gupta Aged About 45 Years Incharge Executive Engineer, P.W.D. (B/ R) Division Ramanujganj, District Balrampur Chhattisgarh.
- 12** - Shraddha Singh W/o Shishir Kumar Singh Aged About 45 Years R/o House No. -170, Floral City, Dunda, Raipur District Raipur Chhattisgarh.
- 13** - Nitya Thakur W/o Shri D.P. Thakur Aged About 46 Years R/o. Sadar Deep Enclave, Uslapur District Bilaspur Chhattisgarh.
- 14** - Keshav Prasad Lahre S/o R.R. Lahre Aged About 51 Years R/o D 119, Ramalife City, Sakri District Bilaspur Chhattisgarh.
- 15** - Nitesh Tiwari S/o G.P. Tiwari Aged About 42 Years R/o. Flat No. 108, Vashudhara Heights Apartment, Chopdapara Ambikapur, District Sarguja Chhattisgarh.



- 16** - Rashmi Vaishya W/o Nilay Gupta Aged About 38 Years R/o. Techers Colony Ambedkar Ward Mungeli, District Mungeli Chhattisgarh.
- 17** - Nand Kishor Dadsena S/o Shri T.K. Dadsena Aged About 46 Years Presently Working As Deputy Project Manager, Office Of The Managing Director C.G.R.I.D.C.L. Sirpur Bhawan Raipur Behind Akashwani Kendra Raipur, District Raipur Chhattisgarh.
- 18** - B.K. Gothi S/o Late Shri Siyaram Gothi Aged About 44 Years Presently Working As P.W.D. Office Chainganj, Gunderdehi, District Balod Chhattisgarh.
- 19** - Brijesh Chaturvedi Aged About 44 Years Presently Working As S.D.O. P.W.D. (B/ R), Sub Division Manendrgarh, District Manendragarh Chirmiri Bharatpur, Chhattisgarh.
- 20** - Santosh Kumar Netam Aged About 44 Years Presently Working As Assistant Engineer N.H. Division Jagdalpur, District Baster, Chhattisgarh.
- 21** - Ashish Kumar Dubey Aged About 50 Years Presently Working As Assistant Engineer Office Of The Chief Engineer N.H. Zone Raipur District Raipur Raipur Chhattisgarh.
- 22** - Mahavir Prasad Dadsena Aged About 50 Years Presently Working As S.D.O. P.W.D (B/ R) Sub Division Kurud, District Dhamtari, Chhattisgarh.
- 23** - Virendra Chaudhary Aged About 46 Years Presently Working As In Charge Executive Engineer P.W.D (B/ R) Divisional Jashpur District Jashpur Chhattisgarh.
- 24** - Amit Kashyap S/o R.N. Kashyap Aged About 47 Years Project Manager, Office Of The Managing Director C.G.R.I.D.C.L Sirpur Bhawan, Raipur Behind Akashwani Kendra Raipur, District Raipur Chhattisgarh.
- 25** - Ramadhar Tamre Aged About 51 Years Assistant Engineer Office Of The Project Manager A.D.B Divsion, Jashpur, District Jashpur, Chhattisgarh.



- 26** - Rameshwar Prasad Singh Aged About 39 Years Assistant Engineer Office Of The Engineer In Chief Nirman Bhawan Nawa Raipur, District Raipur Chhattisgarh.
- 27** - Sunil Kumar Chaurasia Aged About 52 Years S.D.O P.W.D. (B/ R) Sub Division Kawardha, District Kawardha - Kabirdham, Chhattisgarh.
- 28** - Bhawesh Kumar Singh Aged About 51 Years S.D.O. P.W.D (B/ R) Sub Division Bemetara District Bemetara, Chhattisgarh.
- 29** - Sushri Pragma Nand Aged About 45 Years Incharges Executive Engineer P.W.D. N.H. Division Jagdalpur, District Baster Chhattisgarh.
- 30** - Divya Gulab Kerketta Aged About 47 Years Assistant Engineer P.W.D. Bridge Circle Ambikapur, District Sarguja, Chhattisgarh.
- 31** - Sushri Neeta Baidh Aged About 42 Years S.D.O P.W.D (B/ R) Sub Division Pithaura, District Mahasamund, Chhattisgarh.
- 32** - Sushri Ritu Khare Aged About 40 Years S.D.O P.W.D(B/ R) Sub Division Khairagarh, District Khairagarh Chhuikhadan Gandai Chhattisgarh.
- 33** - Kumari Asha Mandawi Aged About 47 Years Presently Working As S.D.O P.W.D(B/ R) Sub Division Antagarh, District Kanker, Chhattisgarh.
- 34** - Kumari Purnima Kaushik Aged About 40 Years Presently Working As S.D.O P.W.D (B/ R) Sub Divisional No. 2 Kondagaon, District Kondagaon, Chhattisgarh.
- 35** - Agamdas Banjara Aged About 47 Years Presently Working As Office of The Project Manager A.D.B Division Rajnandgaon, District Rajnandgaon, Chhattisgarh
- 36** - Shradha Singh Aged About 48 Years Presently Working As Assistant Engineer P.W.D N.H. Circle Raipur District Raipur, Chhattisgarh.
- 37** - S. Barua Aged About 60 Years Presently Working As Assistant Engineer S.D.O (P.W.D), Building And Roads, Sub - Division- Dharamjaygarh, District Raigarh, Chhattisgarh.



38 - Mohan Ram Bhagat Aged About 58 Years Presently Working As Assistant Engineer P.W.D. Building And Roads, Ambikpaur, District Sarguja, Chhattisgarh.

... Respondents

(Cause-title taken from Case Information System)

For Appellants	:	Mr. Sunil Otwani along with Mr. Shobhit Koshta, Advocate
For Respondents-State	:	Mr. Shashank Thakur, Deputy Advocate General
For Private Respondents	:	Mr. Manoj Paranjpe and Mr. Sourabh Dangi, Advocates

Hon'ble Shri Ramesh Sinha, Chief Justice

Hon'ble Shri Naresh Kumar Chandravanshi, Judge

Judgment on Board

Per Ramesh Sinha, Chief Justice

24.01.2025

1. Heard Mr. Sunil Otwani assisted by Mr. Shobhit Koshta, learned counsel for the appellants. Also heard Mr. Shashank Thakur, learned Deputy Advocate General, appearing for the State as well as Mr. Manoj Paranjpe and Mr. Sourabh Dangi, learned counsel appearing for the private respondents.
2. By way of this writ appeal, appellants have prayed for following relief(s):

“It is therefore, humbly prayed that the Hon'ble Court may kindly be pleased to allow the instant appeal and the judgment dated 26.06.2024 passed by the learned Single Judge in writ petition bearing WPS No.



5422/2023 in between Anuj Sharma and Others Vs. State of Chhattisgarh and others may kindly be set-aside and the writ petition filed by the appellant may kindly be allowed. Further, the Hon'ble Court may be pleased to quash the impugned order dated 26.07.2023 passed by the Respondent authorities being arbitrary, illegal and non-est in the eyes of law in the interest of justice.”

3. The present intra Court appeal has been filed against the order dated 26.06.2024 passed by the learned Single Judge in Writ Petition (S) No.5422 of 2023 and analogous cases (*Anuj Sharma and others v. State of Chhattisgarh and others*), whereby the writ petition filed by the appellants/writ petitioners have been dismissed.
4. Brief facts of the case, in a nutshell, are that, the appellants who were petitioners before the learned Single Judge preferred a writ petition challenging the legality, validity and propriety of the order dated 26.07.2023 passed by the respondent authorities whereby the long-standing seniority of the appellants has been disturbed. The appellants are holding the substantive post of Assistant Engineers (Civil) in the Public Works Department. The appellants were initially appointed on the post of Sub Engineer in the Public Works Department and the appointment of the appellants was done not only strictly in conformity with the constitutional scheme but also in accordance with the statutory rules. The service



conditions of the appellants governed by the statutory rules, which are being enacted by the State Government by exercising the powers under Article 309 of the Constitution of India. Since the appellants were appointed under the constitutional scheme. On 24.07.2008, the Departmental Promotion Committee ('DPC') was convened for the purpose of promotion from the post of Sub-Engineer to the post of Assistant Engineer. Since, the appellants were possessing the requisite qualification therefore their candidature was considered in an objective manner and they were promoted to the post of Assistant Engineer (Civil) and for the said purpose, the gradation list was prepared on 01.04.2006. On the strength of DPC, which was convened on 24.07.2008; the appellants were given their joining order to the post of Assistant Engineer vide order dated 19.09.2008 and the respondent authorities have issued an advertisement for direct recruitment to the post of Assistant Engineer, the private respondents were appointed on the post of Assistant Engineer vide order dated 02.08.2008. In order to resolve the dispute regarding seniority and for fixing the seniority of the appellants along with other promoted employees, the decision was taken by the respondent authorities vide order dated 28.08.2010 based on the recommendation made by the Review DPC to the effect that the seniority of the appellants would be fixed as on the date of recommendation of DPC and not on their date of joining. After the recommendation of



the Review DPC, the order was issued on 28.08.2010 replacing the earlier list issued on 31.07.2008 and the name of the appellants and other persons were appointed vide order dated 19.09.2008. After amendment, a list was prepared in which the appellants were included and in both the list. Subsequently, in the year 2011, the gradation list was prepared for the post of Assistant Engineer with the cut-off date of 2009. In the said gradation list, those who were appointed vide order dated 02.08.2008 were placed below the appellants and the said gradation list was followed by the concerned authorities from year 2009 to 2023 and appellants who were appointed vide order dated 19.09.2008 were given the seniority from 31.07.2008; the date when the DPC recommendation were taken into account by the respondent authorities. Subsequently, as a bolt from blue, all of a sudden, the order has been passed vide order 26.07.2023, by virtue of which, the appellants are being placed below to the private respondents in the gradation list and long-standing seniority of the appellants has been disturbed.

5. Being aggrieved with the order passed by the respondent authorities dated 26.07.2023, a writ petition bearing Writ Petition (S) No.5422 of 2023 was filed by the appellants/writ petitioners, which was dismissed by the learned Single Judge vide order dated 26.06.2024 holding that the appellants are not entitled to get seniority over private respondents.



6. Challenging the aforesaid order passed by the learned Single Judge while dismissing the writ petition filed by the appellants/writ petitioners, the instant appeal has been filed by the appellants.

7. Learned counsel for the appellants submits that the impugned order is illegal and bad in law. He further submit that the seniority confers a valuable right of the employee and their entire future career at times is dependent upon such seniority and the impugned order has not been passed in the light of the relevant rules and issued in the most arbitrary manner, which needs to be set aside. It has been contended that the learned Single Judge erred in not considering the well settled proposition of law that long standing seniority should not be disturbed and hence, in the light of above-mentioned facts and laws, it is evidently clear that long standing seniority should not be disturbed of the appellants particularly when it is admitted fact that the private respondents have not challenge the initial seniority list which was published in year 2011 within a reasonable period of time and after passage of decade, have challenge the seniority list which is impermissible under law. It has been further contended that some of the private respondents have preferred a writ petition bearing Writ Petition (S) No.3208 of 2020, which was disposed of vide order dated 18.08.2020, by virtue of which certain directions were issued and the same was considered by the competent authority in a proper perspective and thereafter the gradation list of 2021 was



prepared. In the said gradation, the private respondents were placed below to the appellants in the gradation list; meaning thereby the grievance of the private respondents was considered in an objective manner and their objection/ representation were decided and only then, the gradation list was prepared in which the seniority of the appellants were placed above the private respondents and the State government has supported the committee report in their reply and thereafter issued the impugned gradation list taking a completely different stand from its earlier version, which is not sustainable under the law. It has been argued that the appellants have been promoted on the post of Assistant Engineer (Civil) vide DPC proceedings dated 24.07.2008 and recommended for promotion on 31.07.2008; at that relevant time, the private respondents were even not part of the feeder cadre which shows that the promotion of the appellants was done before the selection list of the private respondent i.e. 02.08.2008 hence, as per the relevant rules, the appellants were senior to the private respondent and the date of issuance of formal appointment order would be immaterial, which has not been considered by the learned Single Judge. As such, writ appeal filed by the appellants be allowed and the impugned order dated 26.06.2024 passed by the learned Single Judge, be set-aside. Reliance has been placed upon the judgments rendered by Hon'ble Supreme Court in the matters of **Shiba Shankar**



Mohapatra and others v. State of Orissa and others reported in ***(2010) 12 SCC 471***, ***H.S. Vankani and others v. State of Gujarat and others*** reported in ***(2010) 4 SCC 301***, ***State of Uttaranchal v. Shiv Charan Singh Bhandari*** reported in ***(2013) 12 SCC 179***, ***S.S. Balu v. State of Kerala*** reported in ***(2009) 2 SCC 479***, ***K.R. Mudgal and others v. R.P. Singh and others*** reported in ***(1986) 4 SCC 531***, ***Keshav Deo and another v. State of U.P. and others*** reported in ***(1991) 1 SCC 280*** as well as ***V. Vincent Velankanni v. Union of India and others*** reported in ***2024 SCC OnLine SC 2642***, to buttress his submissions.

8. On the other hand, learned State counsel opposes the submissions made by the learned counsel for the appellants and submits that the learned Single Judge after considering all the aspects of the matter, has rightly passed the impugned order, which does not call for any interference.
9. Learned counsel appearing for the private respondents would submit that there is no ambiguity in the decision dated 26.07.2023 or in decision making process and submission made by the appellants that the seniority of the appellants cannot be challenged or disturbed after near about 12 years (After appointment of respondents on 02.08.2008 and promotion of the petitioners on 19.09.2008, the first gradation list was issued on 29.03.2011), is misconception of facts as illegality cannot be



allowed to be continued. They would further submit that objections were invited by the State Government and the direct recruitees raised the objection then and there and it was kept under consideration, which has been decided finally on 26.07.2023. it has been contended that after appreciating the facts and circumstances of the case as well as after applying the various provisions of law as also while relying upon the judgments of the Hon'ble Supreme Court, the learned Single Judge has passed the impugned order with cogent and justifiable reasons, which does not call for any interference. To substantiate their submissions, they would rely upon the judgment rendered by Hon'ble Supreme Court in the matter of ***Bihar State Electricity Board and others v. Dharamdeo Das*** reported in ***2024 SCC OnLine SC 1768***.

10. We have heard learned counsel for the parties, considered their rival contentions and perused the impugned order as well as materials available on record with utmost circumspection.
11. At this stage, learned counsel for the appellants would submit that against the order passed by the learned Single Judge, a review petition has been filed being Review Petition No.270 of 2024, which was dismissed by the learned Single Judge vide order dated 06.12.2024.
12. Considering the matter in its entirety and after considering the submissions made by learned counsel appearing for the parties



as also perusing the impugned order, we find that while deciding the writ petition filed by the appellants/writ petitioners, the learned Single Judge has framed three questions, which are as follows :-

“(1) Whether the petitioners who were considered for promotion for the cadre post of Assistant Engineers in the departmental promotion committee held on 24.07.2008 against 30 anticipated vacancies of Assistant Engineers when there were no cadre post was vacant can claim seniority from the date of recommendation i.e. 24.07.2008 or from the date when other Sub-Engineers were promoted vide order dated 31.07.2008 whereas they were promoted on 19.09.2008 by the State on that day only the post were vacated due to promotion of 26 Assistant Engineer (Civil) to Executive Engineer (Civil).

(2) Whether relative seniority between direct recruited Assistant Engineer and promotee Assistant Engineer shall be governed by Rule 12(1)(e) of the Rules, 1961.

(3) Whether the petitioners are entitled to get seniority on the count of principle of long-standing of their seniority from 2011 till the impugned order dated 26.07.2023 was passed by the State.”

- 13.** After appreciating the arguments advanced on behalf of the respective parties as well as after considering the various



judgments rendered by the Hon'ble Supreme Court as also the relevant Rules, i.e. Rule 12 of the Chhattisgarh Civil Services (General Conditions of Service) Rules, 1961 as well as Chhattisgarh Public Works Engineering (Gazetted) Service Recruitment Rules, 2015, leaned Single Judge has held that it is not the case of the appellants that they should be granted seniority as per Rule 12(1)(d) of the Rules, 1961 as it is not their case that due to lack of any annual character role or for any other reasons, their promotion was delayed and subsequently they were found fit. In fact, the petitioners were promoted against the anticipated vacancies which has been made available on account of promotion of Assistant Engineer to the post of Executive Engineer on 19.09.2008. Thus, while granting seniority to the petitioners from 02.08.2008, the rules were wrongly applied, which has been corrected by the impugned order dated 26.07.2023. As such, the impugned order does not warrant any interference by the writ Court.

14. The issue with regard to 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 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, has been dealt with by the Hon'ble Supreme Court in the matter of ***K.R. Mudgal***



(supra), relevant paragraphs of which, are as follows :-

“7. The respondents in the writ petition raised a preliminary objection to the writ petition stating that the writ petition was liable to be dismissed on the ground of laches. Although the learned Single Judge and the Division Bench have not disposed of the above writ petition on the ground of delay, we feel that in the circumstances of this case the writ petition should have been rejected on the ground of delay alone. The first draft seniority list of the Assistants was issued in the year 1958 and it was duly circulated amongst all the concerned officials. In that list the writ petitioners had been shown below the respondents. No objections were received from the petitioners against the seniority list. Subsequently, the seniority lists were again issued in 1961 and 1965 but again no objections were raised by the writ petitioners, to the seniority list of 1961, but only the petitioner No. 6 in the writ petition represented against the seniority list of 1965. We have already mentioned that the 1968 seniority list in which the writ petitioners had been shown above the respondents had been issued on a misunderstanding of the Office Memorandum of 1959 on the assumption that the 1949 Office Memorandum was not applicable to them. The June 1975 seniority list was prepared



*having regard to the decision in **Ravi Varma's** case (supra) and the decision of the High Court of Andhra Pradesh in the writ petitions filed by respondent Nos. 7 and 36 and thus the mistake that had crept into the 1968 list was rectified. Thus the list was finalised in January, 1976. The petitioners who filed the writ petition should have in the ordinary course questioned the principle on the basis of which the seniority lists were being issued from time to time from the year 1958 and the promotions which were being made on the basis of the said lists within a reasonable time. For the first time they filed the writ petition in the High Court in the year 1976 nearly 18 years after the first draft seniority list was published in the year 1958. Satisfactory service conditions postulate that there should be no sense of uncertainty amongst the Government servants created by the writ 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. Unfortunately in this case even after nearly 32 years the dispute regarding the appointment of some of the respondents to the writ petition is still*



*lingering in this Court. 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. The facts of this case are more or less similar to the facts in **R.S. Makashi & Ors.v. I.M. Menon & Ors., [1982] 2 S.C.R. 69.** In the said decision this Court observed at page 100 thus:*

"In these circumstances, we consider that the High Court was wrong in over-ruling the preliminary objection raised by the respondents before it, that the writ petition should be dismissed on the preliminary ground of delay and laches, inasmuch as it seeks to disrupt the vested rights regarding the seniority, rank and promotions which had accrued to a large number of respondents during the period of eight years that had intervened between the passing of the impugned Resolution and the institution of the writ petition. We would accordingly hold that the challenge raised by the petitioners against the seniority principles laid down in the Government Resolution of March 22, ought to have been rejected by the High Court on the ground of delay and laches and the writ petition in so far as it related to the prayer for quashing the said Government Resolution should have been



dismissed."

8. *We are in respectful agreement with the above observation.*

9. *We may also refer here to the weighty observations made by a Constitution Bench of this Court in **Maloon Lawrence Cecil D'Souza v. Union of India & Ors., [1975] Supp. S.C.R. 409** at page 413-414 which are as follows:*

"Although security of service cannot be used as a shield against administrative action for lapse 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 to 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 given a quietus after lapse of some time."



10. We feel that in the circumstances of this case, we should not embark upon on and enquiry into the merits of the case and that the writ petition should be dismissed on the ground of laches alone.

11. We accordingly allow these appeals, set aside the judgment of the Division Bench of the High Court and dismiss the writ petition filed in the High Court. We also direct that all the promotions made in the Intelligent Bureau shall be reviewed in accordance with the impugned seniority list dated January 28, 1976. There shall be no order as to costs.”

- 15.** The issue with regard to effect of altering the seniority list at a belated stage and how it may adversely affect the employees whose seniority rank has been determined in the meantime dealt with by the Hon’ble Supreme Court in the matter of **V. Vincent Velankanni** (supra), observing as follows :-

“45. This Court has time and again dealt with the effect of altering the seniority list at a belated stage and how it may adversely affect the employees whose seniority and rank has been determined in the meantime. In this connection, reference may be made to Malcom Lawrence Cecil D'Souza v. Union of India and Others, (1976) 1 SCC 599, wherein this Court held that: -

“9. Although security of service cannot be



used as a shield against 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..... 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 given a quietus after lapse of some time.”

46. In *R.S. Makashi and Others v. I.M. Menon and Others*, (1982) 1 SCC 379, this Court observed as follows: -

“33. We must administer justice in accordance with law and principles of equity, justice and good conscience. It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set aside after the lapse of a



number of years.”

47. In **K.R. Mudgal and Others v. R.P. Singh and Others**, (1986) 4 SCC 531, this Court observed in the following terms: -

“2. ... 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.”

48. In **B.S. Bajwa and Another v. State of Punjab and Others**, (1998) 2 SCC 523, this Court held that the seniority list should not be reopened after a lapse of reasonable period as it would disturb the settled position which is unjustifiable. The relevant extract is as follows: -

“7. ... It is well settled that in service matters the question of seniority should not be reopened in such situations after the lapse of a reasonable period because that results in disturbing the settled position which is not justifiable....”

49. It can easily be inferred that in the intervening period, before the GO dated 4th August, 2015 came to be issued, seniority of multitudes of employees must have been fixed according to the GO dated 24th December, 2002, which is according to the date of promotion to skilled grade and not



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

50. Thus, much water has flown under the bridge and retrospective application of the GO issued in 2015 would open floodgates of litigation and would disturb the seniority of many employees causing them grave prejudice and heartburn as it would disturb the crystallized rights regarding seniority, rank and promotion which would have accrued to them during the intervening period. To alter a seniority list after such a long period would be totally unjust to the multitudes of employees who could get caught in the labyrinth of uncertainty for no fault of theirs and may suffer loss of their seniority rights retrospectively.”

- 16.** Further, it is well settled law that the retrospective seniority cannot be given to an employee from a date when he was not even borne in the cadre, nor can seniority be given with retrospective effect as that might adversely affect others. The said issue has come up for



consideration before the Hon'ble Supreme Court in the matter of **Dharamdeo Das** (supra), in which, the Court held as follows :-

*“20. In **State of Bihar and Others v. Akhouri Sachindra Nath and Others, 1991 Supp(1) SCC 334**, it was held that retrospective seniority cannot be given to an employee from a date when he was not even borne in the cadre, nor can seniority be given with retrospective effect as that might adversely affect others. The same view was reiterated in **Keshav Chandra Joshi and Others vs. Union of India and Others, 1992 Supp (1) SCC 272**, where it was held that when a quota is provided for, then the seniority of the employee would be reckoned from the date when the vacancy arises in the quota and not from any anterior date of promotion or subsequent date of confirmation. The said view was restated in **Uttaranchal Forest Rangers' Assn. (Direct Recruit) and Others vs. State of U.P. and Others, (2006) 10 SCC 346**, in the following words :*

*“37. We are also of the view that no retrospective promotion or seniority can be granted from a date when an employee has not even been borne in the cadre so as to adversely affect the direct recruits appointed validly in the meantime, as decided by this Court in **Keshav Chandra***



Joshi (supra) held that when promotion is outside the quota, seniority would be reckoned from the date of the vacancy within the quota rendering the previous service fortuitous. The previous promotion would be regular only from the date of the vacancy within the quota and seniority shall be counted from that date and not from the date of his earlier promotion or subsequent confirmation. In order to do justice to the promotees, it would not be proper to do injustice to the direct recruits.....

38. This Court has consistently held that no retrospective promotion can be granted nor can any seniority be given on retrospective basis from a date when an employee has not even been borne in the cadre particularly when this would adversely affect the direct recruits who have been appointed validly in the meantime.” (emphasis added)

21. In *Nani Sha and Others vs. State of Arunachal Pradesh and Others*, (2007) 15 SCC 406, it was observed that mere existence of a vacancy is not sufficient for an employee to claim seniority and the date of actual appointment has to be in accordance with the prescribed procedure. In *Dinesh Kumar Sharma*¹⁶ (supra), the following



pertinent observations were made :

*“34. Another issue that deserves consideration is whether the year in which the vacancy accrues can have any relevance for the purpose of determining the seniority irrespective of the fact when the persons are recruited. Here the respondent's contention is that since the vacancy arose in 1995-1996, he should be given promotion and seniority from that year and not from 1999, when his actual appointment letter was issued by the appellant. This cannot be allowed as no retrospective effect can be given to the order of appointment order under the Rules nor is such contention reasonable to normal parlance. This was the view taken by this Court in **Jagdish Ch. Patnaik v. State of Orissa, (1998) 4 SCC 456.***

X X X X

*23. The view that seniority can neither be reckoned from the date when a vacancy arises, nor can it be granted retrospectively unless the service rules specifically provide for such a situation, is fortified by the decision of this Court in K.K. Vadera (supra) which has emphasised in no uncertain terms the settled position in law that promotion to a post should only be granted from the date of the promotion and not from the date on which a vacancy may have arisen. In **Ganga***



Vishan Gujarati vs State of Rajasthan, (2019) 16 SCC 28, this Court had reiterated the principle that retrospective seniority cannot be granted to an employee from the date when she was not even borne on the cadre. This principle has been built upon by a line of precedents starting with the decision of the Constitution Bench of this Court in ***Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra, (1990) 2 SCC 715***, followed in *Akhouri Sachindra Nath*¹⁷ (*supra*), *Dinesh Kumar Sharma*¹⁶ (*supra*) and several other cases.

24. In ***Pawan Pratap Singh vs. Reevan Singh, (2011) 3 SCC 267***, this Court had taken note of the earlier decision in *Pravat Kiran Mohanty* (*supra*) and summarised the position in the following words :

45. A consistent line of precedent of this Court follows the principle that retrospective seniority cannot be granted to an employee from a date when the employee was not borne on a cadre. Seniority amongst members of the same grade has to be counted from the date of initial entry into the grade. This principle emerges from the decision of the Constitution Bench of this Court in *Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra* [*Direct Recruit Class II Engg. Officers' Assn. v. State of*



*Maharashtra*²³. The principle was reiterated by this Court in *Akhouri Sachindra Nath (supra)* and *Dinesh Kumar Sharma (supra)*. In *Pawan Pratap Singh (supra)*, this Court revisited the precedents on the subject and observed :

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

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

(iii) Ordinarily, notional seniority may not be granted from the backdate and if it is done, it must be based on objective



considerations and on a valid classification and must be traceable to the statutory rules.

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

This view has been re-affirmed by a Bench of three Judges of this Court in P. Sudhakar Rao v. U. Govinda Rao, (2013) 8 SCC 693." (emphasis added) [Also refer : P. Sudhakar Rao (supra) and Manpreet Singh Poonam (supra)."

17. From perusal of the record, it is apparent that the claim of the appellants has been rejected by the learned Single Judge vide impugned order dated 26.06.2024, which was challenged by one Sanjay Gopal Chauhan by filing a review petition being Review Petition No.270 of 2024 and the same was dismissed by the learned Single Judge vide its order dated 06.12.2024 by observing as follows :-



“3. There is no other ground pointed out by the petitioner showing any manifest error on the record and have not further brought into the notice, any new facts, which could not be produced earlier despite diligent efforts made by the petitioner. It is well settled principles of law that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47 Rule 1 of the Code of Civil Procedure.

4. It is well settled principle of law that under the garb of review petition, the applicant should not be permitted to argue the entire case afresh, which would amount to convert the review petition into an appeal and the same is not sustainable in law. {See: Meera Bhanjan v. Smt. Nirmal Kumar Chowdhary, AIR 1995 SC 455, Lily Thomas etc. v. Union of India and others, AIR 2000 SC 1650, Ajit Kumar Rath v. State of Orissa and others, AIR 2000 SC 85, Government of T.N. & Others v. M. Ananchu Asari and others, (2005) 2 SCC 332, and Kerla State Electricity Board v. Hitech Electrothermicism & Hydropower Ltd. and others, (2005) 6 SCC 651}.

5. As a sequel, the review petition, sans substratum is liable to be and is hereby dismissed.”

18. Perusal of the impugned order would show that Single Judge



while dealing with the issue of seniority as well as the fact that impugned order has been passed without giving any opportunity of hearing to the petitioners as the same is in violation of principles of natural justice as also definition of cadre, has held thus :-

*“42. The seniority was granted to the petitioners de-hors the Rules, 1961, which have been framed by the State under Article 309 of the Constitution of India and has binding effect, therefore, it is illegality and it is well settled position of law that the illegality cannot be allowed to perpetuate and the petitioners cannot take benefits illegally on the count of long-standing seniority. This issue has come up for consideration before Hon'ble the Supreme Court in case of **Pankjeshwar Sharma & others Vs. State of Jammu & Kashmir & others** reported in **(2021) 2 SCC 188** wherein it has been held in paragraph 24, 35, 36 & 40 as under:-*

“24. It is a settled principle of service jurisprudence and has been consistently followed by this Court that the rules of recruitment to various services under the State or to a class of posts under the State, the State is bound to follow the same and to have the selection of the candidates to be made as per the scheme of recruitment rules and appointments



shall be made accordingly. At the same time, all the efforts shall be made for strict adherence to the procedure prescribed under the recruitment rules. On the contrary, if any appointments are made bypassing the recruitment procedure known to law, will resulted in violation of Article 14 and 16 of the Constitution. This Court in State of U.P. and Others vs. Rajkumar Sharma and Others² and later in Arup Das and Others vs. State of Assam and Others³ considered the question of filling up of vacancies over and above the number of vacancies advertised and held that the filling up of vacancies over and above the number of vacancies advertised would be violative of fundamental rights guaranteed under Article 14 and 16 of the Constitution and the selectees could not claim appointments as a matter of right. This Court further held that even if in some cases appointments had been made erroneously or by mistake, that did not confer any right of appointment to another person as Article 14 of the Constitution does not envisage negative equality and if the State or its authority had committed a mistake at any given stage, it cannot be forced to perpetuate the said mistake under the writ jurisdiction of the High Court under Article 226 of the Constitution. In a situation where the posts in excess of



those advertised had been filled up in extraordinary circumstances, instead of invalidating the excess appointments, the relief could be moulded in such a manner so as to strike a just balance keeping the interest of the State and the interest of the person 2 State of U.P. and Others vs. Rajkumar Sharma and Others (2006) 3 SCC 330 3 Arup Das and Others vs. State of Assam and Others (2012) 5 SCC 559 seeking public employment depends upon the facts of each case for which no set standard can be laid down.

35. This Court in Union of India and Another vs. Kartick Chandra Mondal and Others⁵ observed that if something is being done or acted upon erroneously that cannot become the foundation for perpetuating further illegality. If an appointment is made illegally or irregularly, the same cannot be made the basis of further appointment and erroneous decision cannot be permitted to perpetuate further error to the detriment of the general welfare of the public or a considerable section. This has been the consistent approach of this Court.

36. In Arup Das and Others vs. State of Assam and Others ⁶, this Court observed that:

“19.....even if in some cases



appointments had been made by mistake or wrongly, that did not confer any right of appointment to another person, as Article 14 of the Constitution does not envisage negative equality and if the State had committed a mistake, it cannot be forced to perpetuate the said mistake.”

40. We are also of the view that the appointments of 22 candidates made by the 2nd respondent vide orders dated 23rd February, 2008 and 11th March, 2008 which has given rise to a further litigation are irregular appointments and not in conformity to the recruitment rules, still what being prayed by the appellants if accepted by this Court that will perpetuate the illegality which has been committed by the Staterespondent and negative equality cannot be claimed to perpetuate further illegality under Article 226 of the Constitution of India.”

43. The petitioners have further submitted that without giving any opportunity of hearing, the impugned order has been passed, as such, it is violation of principle of natural justice and on this count also, the same deserves to be quashed. This submission is incorrect submission as the facts regarding their promotion on the post of Assistant Engineer, is known to them and



*issuance of notice will be merely a formality and thus, the non-issuance of notice to the petitioners does not vitiate the impugned order. Hon'ble the Supreme Court has considered the issue where the issuance of notice is formality, it does not vitiate the action taken by the authorities. Hon'ble the Supreme Court in case of **Dharampal Satyapal Limited Vs. Deputy Commissioner of Central Excise, Gauhati & others**, reported in (2015) 8 SCC 519 wherein it has been held in paragraph 39 to 41 as under:-*

“39. We are not concerned with these aspects in the present case as the issue relates to giving of notice before taking action. While emphasizing that the principles of natural justice cannot be applied in straight-jacket formula, the aforesaid instances are given. We have highlighted the jurisprudential basis of adhering to the principles of natural justice which are grounded on the doctrine of procedural fairness, accuracy of outcome leading to general social goals, etc. Nevertheless, there may be situations wherein for some reason – perhaps because the evidence against the individual is thought to be utterly compelling – it is felt that a fair hearing 'would make no difference' – meaning that a hearing would not change the ultimate



conclusion reached by the decision-maker – then no legal duty to supply a hearing arises. Such an approach was endorsed by Lord Wilberforce in Malloch v. Aberdeen Corporation[20], who said that:

“..... A 'breach of procedure...cannot give (rise to) a remedy in the courts, unless behind it there is something of substance which has been lost by the failure. The court dos not act in vain'.

Relying on these comments, Brandon LJ opined in Cinnamond v. British Airports Authority that

“.....no one can complain of not being given an opportunity to make representations if such an opportunity would have availed him nothing'. In such situations, fair procedures appear to serve no purpose since 'right' result can be secured without according such treatment to the individual.

40. In this behalf, we need to notice one other exception which has been carved out to the aforesaid principle by the Courts. Even if it is found by the Court that there is a violation of principles of natural justice, the Courts have held that it may not be necessary to strike down the action and refer the matter back to the authorities to take fresh decision after complying with



the procedural requirement in those cases where non-grant of hearing has not caused any prejudice to the person against whom the action is taken. Therefore, every violation of a facet of natural justice may not lead to the conclusion that order passed is always null and void. The validity of the order has to be decided on the touchstone of 'prejudice'. The ultimate test is always the same, viz., the test of prejudice or the test of fair hearing.

41. In ECIL (supra), the majority opinion, penned down by Sawant, J., while summing up the discussion and answering the various questions posed, had to say as under qua the prejudice principle:

“30. Hence the incidental questions raised above may be answered as follows:

xx xx xx

(v) The next question to be answered is what is the effect on the order of punishment when the report of the enquiry officer is not furnished to the employee and what relief should be granted to him in such cases. The answer to this question has to be relative to the punishment awarded. When the employee is dismissed or removed from service and the inquiry is set aside because the report is not furnished to him, in some cases the non-



furnishing of the report may have prejudiced him gravely while in other cases it may have made no difference to the ultimate punishment awarded to him. Hence to direct reinstatement of the employee with back-wages in all cases is to reduce the rules of justice to a mechanical ritual. The theory of reasonable opportunity and the principles of natural justice have been evolved to uphold the rule of law and to assist the individual to vindicate his just rights. They are not incantations to be invoked nor rites to be performed on all and sundry occasions. Whether in fact, prejudice has been caused to the employee or not on account of the denial to him of the report, has to be considered on the facts and circumstances of each case. Where, therefore, even after the furnishing of the report, no different consequence would have followed, it would be a perversion of justice to permit the employee to resume duty and to get all the consequential benefits. It amounts to rewarding the dishonest and the guilty and thus to stretching the concept of justice to illogical and exasperating limits. It amounts to an "unnatural expansion of natural justice" which in itself is antithetical to justice."

44. Thus, from the above discussions, considering the factual, legal matrix of the



case, it is quite vivid that the petitioners were taken birth in the cadre of Assistant Engineer on 19.09.2008 whereas the respondents have taken birth in the cadre on 02.08.2008 after having appointed as Assistant Engineer as such the petitioners prior to take born in the cadre, they cannot claim seniority over the private respondents. The word cadre has been come up for consideration before Hon'ble the Supreme Court in case of **Ran Singh Malik Vs. State of Haryana and others**, reported in (2002) 3 SCC 182 wherein it has been held as under:-

“The aforesaid Rule nowhere defined the cadre or indicated as to which post would be borne in the cadre. In the absence of such definition of cadre in the Rule, the normal connotation would apply, and therefore, a cadre would ordinarily mean the strength of a service or a part of the service so determined by the Government constituting the post therein”.

44. Again Hon'ble the Supreme Court has examined the definition of cadre in case of **Union of India and others vs. Rubi Mazumdar**, reported in 2008 (9) SCC 242 wherein it has been held in para 22 to 26 as under:-

“22. A conjoint reading of paragraph 103(7) of the Code, 103(iii) of the Railway Establishment Manual and Circular R.B.E.



No.113/97 makes it clear that in the railways, the term `cadre' generally denotes the strength of a service or a part of a service sanctioned as a separate unit. However, for the purpose of roster, a wider meaning has been given to the said term so as to take within its fold the posts sanctioned in different grades. The reason for giving this enlarged meaning to the term "cadre" is that posts in the railway establishment are sanctioned with reference to grades. Even temporary, work charged, supernumerary and shadow posts created in different grades can constitute part of the cadre.

23. In the service jurisprudence which has developed in our country, no fixed meaning has been ascribed to the term "cadre". In different service rules framed under proviso to Article 309 of the Constitution as also rules framed in exercise of the powers of delegated legislation, the word "cadre" has been given different meaning.

24. In A.K. Subraman and Others vs. Union of India and Others [1975 (1) SCC 319], a three Judges Bench of this Court while interpreting the provisions contained in Central Engineering Service, Class I, Recruitment Rules, 1954, observed as under

"20."The word "grade" has various shades



of meaning in the service jurisprudence. It is sometimes used to denote a pay scale and sometimes a cadre. Here it is obviously used in the sense of cadre. A cadre may consist only of permanent posts or sometimes, as is quite common these days, also of temporary posts."

25. In Dr. Chakradhar Paswan vs. State of Bihar and Others [1988 (2) SCC 214] it was observed as under:-

"In service jurisprudence, the term `cadre' has a definite legal connotation. It is not synonymous with `service'. It is open to the Government to constitute as many cadres in any particular service as it may choose according to the administrative convenience and expediency and it cannot be said that the establishment of the Directorate constituted the formation of a joint cadre of the Director and the Deputy Directors because the posts are not interchangeable and the incumbents do not perform the same duties, carry the same responsibilities or draw the same pay. The posts of the Director and those of the Deputy Directors constitute different cadres of the Service. The first vacancy in the cadre of Deputy Directors was that of the Deputy Director (Homoeopathic) and it had to be treated as unreserved, the second reserved and the third unreserved.



Therefore, for the first vacancy of the Deputy Director (Homeopathic), a candidate belonging to the Scheduled Caste had therefore to compete with others.

26. In *State of Maharashtra vs. Purshottam and Others* [1996 (9) SCC 266], it was held that the "cadre" means unit of strength of a service or a part of it as determined by the employer"

46. Thereafter Hon'ble the Supreme Court has again examined the word "Cadre" in case of **Jarnail Singh and others Vs. Lachhmi Narain Gupta and others**, reported in (2022) 10 SCC 595 has held in para 30 and 31 as under:-

"30. It would be relevant to refer to the judgments of this Court which have dealt with the scope of the expression "cadre". Rule 4(2) of the Central Engineering Service, Class I, Recruitment Rules, 1954 provided that 75% of the vacancies in the grade of Executive Engineer, Class I shall be filled by promotion from Assistant Executive Engineers, Class I. Interpreting the words "vacancies in the grade of Executive Engineer", this Court in *A.K. Subraman & Ors. v. Union of India & Ors.*, (1975) 1 SCC 319 held that the word "grade" is used in the sense of cadre.



31. *The dispute that arose for consideration of this Court in Dr Chakradhar Paswan v. State of Bihar & Ors., (1988) 2 SCC 214 34 relates to the posts of Director and three Deputy Directors in the Directorate of Indigenous Medicines, Department of Health, State of Bihar being grouped together for the purpose of implementing the policy of reservation under Article 16(4) of the Constitution of India. This Court was of the opinion that though the Director and three Deputy Directors are Class I posts, the posts of Director and Deputy Directors do not constitute one 'cadre'. It was held that the term "cadre" has a definite legal connotation in service jurisprudence. This Court referred to Fundamental Rule 9(4) which defines the word "cadre" to mean the strength of a service or part of a service sanctioned as a separate unit. It was observed that as the post of Director is the highest post in the Directorate of Indigenous Medicines for which a higher pay scale is prescribed in comparison to Deputy Directors, who are entitled to a lower scale of pay, they constitute two distinct cadres or grades. This Court further expressed its view that it is open to the Government to constitute as many cadres in any particular service as it may choose, according to administrative*



convenience and expediency. This Court concluded that the post of Director and Deputy Directors constitute different cadres in the service”.

47. In view of the above finding, it is quite vivid that the petitioners were granted seniority over the private respondents wrongly, which have been rightly corrected by the respondent/State vide order dated 26.07.2023, which does not warrant any interference by this Court.

48. Accordingly, the Points emerged for determination, are answered against the petitioners and in favour of the State/private respondents by recording its finding that the petitioners are not entitled to get seniority over private respondents and the impugned order dated 26.07.2023 does not suffer from perversity or illegality, which warrants any interference from this Court.

49. The writ petitions sans merit are liable to be dismissed. Accordingly, they are dismissed. The interim order passed by this Court stands vacated.

50. The interlocutory application, if any, stands disposed of.”

- 19.** Taking into consideration the overall facts and circumstances of the case as well as considering the rival submissions made on behalf of the parties as also the dictum rendered by the Hon'ble



Supreme Court in the matter of ***Dharamdeo Das*** (supra), we are of the considered opinion that the retrospective seniority cannot be given to an employee from a date when he was not even borne in the cadre, nor can seniority be given with retrospective effect as that might adversely affect others. As such, the impugned order dated 26.06.2024 passed by the learned Single Judge does not suffers from any illegality and perversities as the same has been passed with cogent and justifiable reasons in a petition under Article 226 of the Constitution of India. In an *intra* Court appeal, no interference is usually warranted unless palpable infirmities are noticed on a plain reading of the impugned orders. In the facts and circumstances of the instant case, on a plain reading of order, we do not notice any such palpable infirmities or perversities, as such, we are not inclined to interfere with the impugned order passed by the learned Single Judge.

- 20.** In the result, the writ appeal lacks merit substance, is liable to be and is hereby dismissed.

Sd/-
(Naresh Kumar Chandravanshi)
Judge

Sd/-
(Ramesh Sinha)
Chief Justice



Headnote

Retrospective seniority cannot be given to an employee from a date when he was not even borne in the cadre, nor can seniority be given with retrospective effect as that might adversely affect others.