IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE GURPAL SINGH AHLUWALIA

ON THE 18th OF DECEMBER, 2023

WRIT PETITION No. 12845 of 2022

BETWEEN:-

RAJENDRA KUMAR VERMA S/O LATE SHRI B.R. VERMA, AGED ABOUT 51 YEARS, OCCUPATION: SERVICE PRESENTLY POSTED AS ASSISTANT INSPECTOR GENERAL OF POLICE (S.C.R.B.)PHQ BHOPAL (M.P.) (MADHYA PRADESH)

.....PETITIONER

(BY SHRI L.C.PATNE – ADVOCATE THROUGH VIDEO CONFERENCING WITH SHRI ABHAY PANDEY - ADVOCATE)

AND

1. **THE STATE OF MADHYA PRADESH THROUGH ITS PRINCIPAL SECRETARY DEPARTMENT OF HOME MANTRALAYA, VALLAB BHAWAN BHOPAL (M.P.) (MADHYA PRADESH)**

2. **THE DIRECTOR GENERAL OF POLICE, POLICE HEADQUARTERS JAHANGIRABAD, BHOPAL, M.P. (MADHYA PRADESH)**

3. **MADHYA PRADESH PUBLIC SERVICE COMMISSION, THROUGH ITS SECRETARY RESIDENCY ROAD, INDORE, DISTRICT INDORE(M.P.) (MADHYA PRADESH)**

4. **SHRI AJAY PANDEY, SUPERINTENDENT OF POLICE, (C.M. SECURITY, BHOPAL, M.P.), THROUGH THE DIRECTOR GENERAL OF POLICE JAHANGIRABAD, BHOPAL, M.P. (MADHYA PRADESH)**

5. **DR. SANJAY KUMAR AGARWAL,**

ADDITIONAL SUPERINTENDENT OF POLICE, JABALPUR, THROUGH THE DIRECTOR GENERAL OF POLICE POLICE HEAD QUARTER, JAHANGIRABAD, BHOPAL, M.P. (MADHYA PRADESH)

.....RESPONDENTS

(BY SHRI SWAPNIL GANGULY – DEPUTY ADVOCATE GENERAL FOR THE RESPONDENTS/STATE)
(SHRI D.K.BILLAIYA – ADVOCATE FOR THE RESPONDENT NO.3)
(SHRI PANKAJ DUBEY – ADVOCAE WITH SHRI AKSHAY KHANDELWAL – ADVOCATE FOR THE RESPONDENT NO.4)
(SHRI SANJAY K.AGARWAL – ADVOCATE WITH SHRI SARTHAK NEMA – ADVOCATE FOR THE RESPONDENT NO.5)
(MS.KAUSHIKI MISHRA – ADVOCATE FOR THE INTERVENOR)

"Reserved on : 23.11.2023"

"Pronounced on : 18.12.2023".

This petition having been heard and reserved for order, coming on for pronouncement this day, the court passed the following:

ORDER

1. This petition under Article 226 of Constitution of India has been filed against the order dated 17-11-2016 passed by respondent on.1, by which the respondents no. 4 and 5 have been given seniority over and above the petitioner, thereby amending the gradation list.

2. It is not out of place to mention here that the Petitioner was placed in the select list for the post of Dy. S.P. and was appointed by order dated 29-9-1997, whereas the respondents no. 4 and 5 were placed in the wait list and were given appointment on the post of Dy. S.P. by order dated 5--1998.

3. According to the petitioner, the amendment in the gradation list, by the respondent no.1 has caused serious prejudice to him, thereby adversely affecting his valuable rights. It is not out of place to mention

here that during the pendency of this writ petition, the representation made by the petitioner was also dismissed, therefore, the petition was amended and prayer for quashment of order dated 21-9-2022 was also made and accordingly, this petition has been filed seeking the following relief(s):

> (i) That, the order impugned dated 17-11-2016 contained in Annexure P/1 may kindly be quashed with all consequential effect, in the interest of justice;
> (ii) That, the respondents be commanded to considering the seniority of the petitioner, his seniority be fixed over and above to the respondent no.4 and 5 and extend all consequential benefits, in the interest of justice;
> (iii) quash the order dated 21-9-2022 Annexure P/15;
> (iv) Cost of the petition be awarded or any other order or direction deemed fit in the circumstances of the case be issued in the favour of the petitioner.

4. It is the case of the petitioner that M.P. Public Service Commission had conducted the State Services Examination in the year 1995 and the result was declared on 19-12-1996. Select list was prepared on 15-1-1997. The petitioner belongs to S.C. Category and his name finds place at serial no. 24 in the select list. The respondents no. 4 and 5 could not find any place in the select list and they were placed in supplementary list (Wait List). The respondents no. 4 and 5 were also selected for the post of Asstt. Registrar, Co-operative and accordingly, they were given appointment on the said post. On 29-9-1997, appointment order of the petitioner on the post of Dy.S.P. was issued. The validity of the select list was 1 year and validity of the supplementary list (wait list) was 1 ½ year. It is the case of the petitioner that the validity of the supplementary list lapsed on 14-7-1998 as its life was to be counted from the date of issuance of select list i.e., 15-7-1997. It appears that two candidates who

were selected for the post of Dy.S.P. did not join and accordingly, by order dated 13-4-1998, consent was obtained from respondents no. 4 and 5 regarding their willingness for their appointment on the post of Dy.S.P. Thereafter, the respondents no. 4 and 5 submitted their consent and accordingly on 5-10-1998, appointment orders of the respondents no. 4 and 5 on the post of Dy.S.P. were issued. It is submitted that the respondents no. 4 and 5 were placed below the petitioner in the gradation list, which was in accordance with law. It is submitted that the things moved smoothly till 2016 and there was no dispute. However, in the year 2016, the wife of the respondent no.4, who is also working in the police department was posted in the office of Additional Director General of Police (Personal). The said office is also responsible for maintaining the seniority of the officers. Accordingly, the respondent no.4 and 5 filed an application for upgradation of their seniority and without issuing any notice to the petitioner, the respondent no.1 by impugned order dated 17-11-2016, upgraded the seniority of the respondents no. 4 and 5 and they were placed at serial no. 617(A) and 617(B) above the petitioner. The petitioner was not aware of this change in the gradation list. Only in the year 2020, the petitioner came to know about such upgradation, therefore, he tried to collect the information by moving an application under R.T.I., wherein after long battle, the Second Appellate Authority passed an order, but according to the petitioner, the same was not executed and copy of order dated 17-11-2016 was not supplied. Thereafter, the petitioner filed W.P. No. 3549 of 2020, accordingly, notices were issued and in pursuance to that, the department of Home supplied the copy of order dated 17-11-2016 to the petitioner alongwith the documents on 22-4-2022. In the meanwhile, the department issued the gradation list during

Covid 19 pandemic showing the position as on 1-4-2020. The petitioner made a representation on 16-3-2021. It is submitted that since, the copy of impugned order dated 17-11-2016 was supplied to the petitioner only on 22-4-2022, therefore, the present petition has been filed only thereafter. It is not out of place to mention here that during the pendency of this petition, the representation made by the petitioner was also dismissed by order dated 21-9-2022.

5. It is not out of place to mention here that during the course of arguments, the Counsel for the petitioner had also argued that since, the life of the supplementary list was 1 ½ years from the date of issuance of select list, therefore, the respondents no. 4 and 5 should not have been given appointment after the expiry of supplementary list, but it was fairly conceded that the petitioner has not challenged the appointment of the respondents no. 4 and 5 as Dy.S.P.s. Therefore, the argument of the Counsel for the petitioner with regard to appointment of the respondents no. 4 and 5 after the expiry of supplementary list shall be considered for limited purposes of dispute in question.

6. Since, the Petitioner has also not impleaded the wife of respondent no.4 and the then Additional Director General of Police (Personal) in their personal capacity, therefore, the Counsel for the Petitioner was directed to address the Court as to whether, in absence of necessary parties, this Court can consider the allegations of bias or not? It was fairly conceded by Counsel for Petitioner that in absence of personal impleadment of wife of respondent no. 4 and the then Additional Director General of Police (Personal), this Court cannot consider the allegations of bias. Therefore, the allegations of bias alleged by the petitioner against the wife of the

respondent no. 4 and the then Additional Director General of Police (Personal) shall not be taken into consideration.

7. It is submitted by Counsel for the Petitioner, that only in the year 2016, the respondents no. 4 and 5 had made their representation against the seniority list, therefore, belated challenge of the Seniority list was bad and should not have been entertained. No notice was issued to the petitioner by the respondents before carrying out changes in the Seniority list, therefore, the impugned order dated 17-11-2016 was bad in law. It is further submitted that the respondents no. 4 and 5 were appointed on the post of Dy.S.P. by order dated 5-10-1998, whereas the Petitioner was appointed as Dy.S.P. by order dated 29-9-1997. By giving seniority to the respondents no. 4 and 5 over and above the Petitioner, the respondents have in fact given seniority to the respondents no. 4 and 5 from the date when they were even not born in the cadre. Any employee who was appointed from waiting list cannot be given seniority with retrospective date. By maintaining silence from the year 1998 till 2016, the respondents no. 4 and 5 had in fact waived their right to challenge the seniority. It is further submitted that the representation of the petitioner has been rejected without assigning any reason and therefore, the respondents cannot supplement the reasons by filing affidavit before the Court. For the purposes of grant of Senior Grade, Selection Grade and Senior Selection Grade, the seniority is the only criteria but the respondents no. 4 and 5 had never challenged the seniority at any point of time. It is further submitted that Rule 12(1) of M.P. Civil Services (General Conditions of Service) Rules, 1961 (In short Rules 1961) deals with seniority which provides that the seniority of persons directly appointed to a post according to rules shall be determined on the basis of

the order of merit in which they are recommended for appointment irrespective of the date of joining. Since, the respondents no. 4 and 5 were never recommended by the P.S.C. for their appointment, and they were merely placed in supplementary list, therefore, they cannot march over and above the Petitioner.

8. Per contra, the Petition is vehemently opposed by the Counsel for the respondents no. 1 to 3. It is submitted by Counsel for State that the petition filed by the petitioner suffers from delay and laches. It is true that no opportunity was granted to the petitioner before passing of impugned order dated 17-11-2016, but thereafter Provisional Gradation List was published on 6-9-2017 with a clear stipulation that the objections be filed within a period of 15 days, but that was not done by the Petitioner. Thereafter, Final Gradation List was published on 16-3-2018, but still the Petitioner did not raise any objection. Thereafter, another Gradation List was published in the year 2020 and only thereafter, the Petitioner woke up and filed a representation on 15-3-2021. It is submitted that only after the DPC was convened for award of IPS, the Petitioner woke up. Another defence which was taken by the respondents no.1 and 2 was that by order dated 21-9-2022, the representation filed by the Petitioner was rejected but the said order has not been challenged but it was fairly conceded that the Petitioner has subsequently challenged the order dated 21-9-2022 by amending the petition, therefore, did not press this ground. It was also submitted by Counsel for State that for the same cause, the petitioner is prosecuting two parallel remedies i.e., the Petitioner had earlier filed W.P. No. 3526/2022, but did not challenge the order dated 17-11-2016 and now by the present petition, the order dated

17-11-2016 has been challenged. It is further submitted that so far as relief claimed by the Petitioner, for consideration of his claim for award of IPS is concerned, the same cannot be entertained by this Court in view of Administrative Tribunals Act. It is further submitted that total 25 posts of Dy.S.P.s were advertised out of which 13 posts were earmarked for UR category, whereas 3 posts were earmarked for SC Category and 5 posts were earmarked for S.T. category. The Petitioner was selected under SC category. The respondents no. 4 and 5 were placed in supplementary list under UR category. Two persons from UR category did not join and accordingly the respondents were given option to join on the post of Dy.S.P., which was accepted by them and accordingly, they were appointed on the post of Dy.S.P. by order dated 5-10-1998. Since, two candidates of UR category did not join, therefore, the respondents no.4 and 5 have been placed at the bottom of list of UR category candidates. It is submitted that although this action should have been taken much earlier, but the said exercise could not be undertaken by the State authorities at the relevant time. It is further submitted that as per the Rules, 1961, the Seniority of the candidates is to be fixed in accordance with merit position as recommended by the M.P. P.S.C.

9. The Counsel for the respondents no. 4 and 5 have submitted that as per Rule 12 of M.P. Police (Gazetted) Recruitment Service Rules, 1987 (In short Rules 1987), the Public Service Commission shall forward to the Government a list arranged in order of merit of candidates who have qualified by such standards as fixed by it and of candidates who belong to Scheduled Caste, Scheduled Tribes who though not qualified by that standard, are declared by the Commission to be suitable for the

appointment to the service with due regard to the maintenance of efficiency of administration. The list shall also be published for general information. Thus, it clear that select list is to be prepared category wise and since, the respondents no. 4 and 5 were in the supplementary list of UR category and two candidates belonging to UR category did not join, therefore the respondents no. 4 and 5 were rightly placed below the last person of UR category. It is further submitted that the representation made by the Petitioner against the Seniority was barred by time. It is submitted by Shri Sanjay K. Agrawal, Counsel for respondent no. 5, that as per the judgment passed by Supreme Court in the case of **P.S. Sadasivaswamy Vs. State of Tamil Nadu** reported in **(1975) 1 SCC 152,** the aggrieved employee must challenge the seniority list within a period of 1 ½ year and after awaiting for six months for a decision on the representation, he must approach the Court within a period of one year thereafter.

10. Considered the submissions made by Counsel for the Parties.

Preliminary Objections

Two Parallel Writ Petitions

11. It is the case of the respondents no.1 and 2 that the petitioner is prosecuting two parallel writ petitions i.e., the present one and W.P. No. 3526 of 2021.

12. The aforesaid submissions made by Counsel for respondents no.1 and 2 is misconceived and is hereby rejected. It is the case of the petitioner, that earlier the respondents did not supply him the copy of order dated 17-11-2016 inspite of direction under the Right to Information Act. Accordingly, he was forced to file W.P. 3549 of 2020. Thereafter, when

his representation was not being decided, therefore, another writ petition number 3526 of 2022 was filed. This Court has gone through the relief clause of the said writ petition and it is found that the said writ petition was mainly for a direction to decide his representation. Further more, the W.P. No. 3526 of 2022 was also withdrawn as infructuous. The order dated 14-7-2023 passed in W.P. No. 3526 of 2022 reads as under :

> This petition under Article 226 of the constitution of India has been filed seeking that following relief:-
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> (i) That, the respondents be commanded to take cognizance over the representation of the petitioner dated 16.03.2021 which was forwarded alongwith covering letter dated 27.03.2021 with a further to take decision and remove the anomaly in the gradation list issued showing the position as on 01.04.2020 and to give the correct place to the petitioner i.e. over and above to the Respondent no.4 and 5 in the gradation list 01.04.2020, in the interest of justice.
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> (ii) Cost of the petition be awarded or any other order or direction deemed fit in the circumstances of the case be issued in the favour of the Petitioner.
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> 2. It is fairly conceded by the counsel for the petitioner that during the pendency of this petition, the representation made by the petitioner has been rejected by order dated 21/9/2022 and the same is being challenged in subsequently filed writ petition no.12845/2022 and the necessary application for amendment has also been filed in the said writ petition.
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> 3. Thus, it is submitted that for all practical purposes, this petition has rendered infructuous as the relief claimed by the petitioner has already been granted and the representation made by the petitioner has been decided.
>
> 4. Accordingly, this petition is dismissed as infructuous.

12. Thus, it is clear that the subject matter of W.P. No. 2536 of 2022 was altogether different. Further more, it is clear that the respondents no. 1 and 2 did not supply him the copy of order dated 17-11-2016 and with

great difficulty and that too after approaching the Information Officer under Right to Information Act as well as the High Court, the respondents no.1 and 2 supplied the copy of order dated 17-11-2016 along with relevant documents. Thereafter, they did not decide the representation, thereby compelling the Petitioner to approach this Court by filing W.P. No. 2536 of 2022. Thus, it is clear that not only, this petition is neither barred by res-judicata non can be termed as parallel proceedings. On the contrary, it was the respondents no.1 and 2, who for the reasons best known to them, were deliberately depriving the petitioner from the relevant documents and thereafter they were sitting over the representation of the petitioner. Accordingly, the preliminary objection with regard to parallel proceedings is hereby rejected.

Consideration of case on merits

The following questions emerge for adjudication of the subject matter of this petition :

(i) Whether the representation made by respondents no. 4 and 5 in the year 2016, against the Seniority list was belated or not?

and

(ii) Whether the representation made by the Petitioner against the order dated 17-11-2016 was belated or not?

(iii) Whether the order dated 17-11-2016 is bad in law for want of non – grant of opportunity to the Petitioner or not?

(iv) Whether a category wise (Unreserved/SC/ST/OBC) select list is to be prepared separately by the Commission or a consolidated select list, as per the merit is to be prepared, irrespective of category?

(v) Whether the waitlisted candidate has to be placed below the last selected candidate of a particular category or the waitlisted candidate has to be placed below the last candidate placed in the select list irrespective of his category?

(vi) Whether the waitlisted candidate can be given seniority from a date even when he was even not born in the cadre?

(vii) Whether the respondents no. 4 and 5 were appointed on the post of Dy.S.P. after the expiry of wait list? If yes, then in absence of challenge to their appointment, its effect.

(viii) Whether the order dated 17-11-2016 is an unreasoned order? If yes, then its effect?

Conclusion

Whether the representation made by respondents no. 4 and 5 in the year 2016, against the Seniority list was belated or not?

and

Whether the representation made by the Petitioner against the order dated 17-11-2016 was belated or not?

10. For deciding the above questions, the following dates are important :

Sr.No.	Date	Action
1.	15-1-1997	Select List was prepared
2.	29-9-1997	The Petitioner was given appointment on the post of Dy.S.P.
3.	13-4-1998	Consent was sought from respondents no. 4 and 5 (waitlisted candidates) for their appointment on the post of Dy.S.P.

4.	23-4-1998	Consent was given by respondents no. 4 and 5 (waitlisted candidates) for their appointment on the post of Dy.S.P.
5.	5-10-1998	Appointment orders of the respondents no. 4 and 5 (waitlisted candidates) on the post of Dy.S.P.
6.	20-4-2015	Order of confirmation of respondents no. 4 and 5 on the post of Dy.S.P. w.e.f. 26-10-2000 and 27-10-2000.
7.	24-5-2016	Representation made by respondents no. 4 and 5 against the seniority list
8.	17-11-2016	Impugned order of placing the respondents no. 4 and 5 above the petitioner was filed.
	6-9-2017	Seniority List was published inviting objections within 15 days of its uploading on website, so that corrections may be carried out in the next list
		Gradation list was issued showing the status as on 1-8-2018
	4-12-2020	Gradation list was issued showing position as on 1-4-2020
	16-3-2021	Representation against order dated 17-11-2016 was filed by petitioner
	21-9-2022	Representation made by Petitioner is rejected by the Respondents
		Order dated 1-9-2022, has been challenged by incorporating amendment in this petition

11. It is the submission of Counsel for the State as well as Counsel for respondent no. 5 that by order dated 20-4-2015, the respondents no. 4 and 5 were confirmed on the post of Dy.S.P. w.e.f. 26-10-2000 and 27-10-2000 respectively, therefore, prior thereto,there was no occasion for them

to make any representation against the Seniority list. Therefore, it is submitted that the representation made by respondents no. 4 and 5 on 24-5-2016 was not belated and did not suffer from delay and laches.

12. Considered the submissions made by Counsel for the respondents.

13. It is not the case of the Respondents no. 4 and 5 as well as the State that prior to 20-4-2015, the names of the respondents no. 4 and 5 were not included in the gradation list. **Although on 20-4-2015, a formal order was passed thereby confirming the respondents no. 4 and 5 w.e.f. 26-10-2000 and 27-10-2000,** but it is also not the case of the respondents that prior to 20-4-2015, no senior grade, selection grade or senior selection grade was ever given to the respondents no. 4 and 5. **From the representation made by the respondents no. 4 and 5 on 30-5-2016 and 24-5-2016, it is clear thatthey were holding the post of Deputy Commandant, SAF, Bhopal and Asstt. Inspector General, respectively. Thus, it is clear that the respondents no. 4 were not only granted higher grade, but they were also promoted to the post of Add. S.P..**Thus, it is clear that all the benefits of regular and confirmed employees were given to the respondents no. 4 and 5, even prior to issuance of formal order of confirmation w.e.f. 26-10-2000 and 27-10-2000. Further more, in the gradation list of 2014, i.e., issued prior to order of confirmation, there is no mention/remark against the names of the respondents no. 4 and 5 that they are still on probation and are unconfirmed/temporary/quasi-permanent employees. Therefore, the stand taken by the respondent no. 5 that cause of action for making representation against the seniority list, arose for the first time on 20-4-2015 is misconceived and cannot be accepted. Although by formal order

dated 20-4-2015, the respondents no. 4 and 5 were confirmed w.e.f. 26-10-2000 and 27-10-2000, but the manner in which senior pay grades and promotion were given to the respondents no. 4 and 5, therefore, it is clear that even otherwise, the State Govt. was treating the respondents no. 4 and 5 as deemed confirmed.

14. It is undisputed fact, that after the appointment of the respondents no. 4 and 5 i.e., on 5-10-1998, Seniority lists were being issued by the State Govt. regularly, and the respondents no. 4 and 5 never challenged the same. Thus, it is clear that the representation made by the respondents no. 4 and 5 in the year 2016 against their position in the gradation list was highly belated. The Supreme Court in the case of **Amrit Lal Berry Vs. Collector of Central Excise, New Delhi & others** reported in **(1975) 4 SCC 714** has held as under :

> **17.** Learned counsel for the opposite parties has relied on *Rabindra Nath Bose* v. *Union of India* where, because rights of persons who had benefited from allegedly illegal seniority rules for a long time would be disturbed, this Court dismissed a petition under Article 32 on the ground of inordinate delay in seeking relief. This Court said there :
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> "It is said that Article 32 is itself a guaranteed right. So it is, but it does not follow from this that it was the intention of the Constitution-makers that this Court should discard all principles and grant relief in petitions filed after inordinate delay.
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> We are not anxious to throw out petitions on this ground, but 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."

The Supreme Court in the case of **Shiba Shankar Mohapatra & Ors. Vs. State of Orissa & Ors** reported in **(2010) 12 SCC 471** has held as under :

> **18.** The question of entertaining the petition disputing the long-standing seniority filed at a belated stage is no more res integra. A Constitution Bench of this Court, in *Ramchandra Shankar Deodhar* v. *State of Maharashtra* considered the effect of delay in challenging the promotion and seniority list and held that any claim for seniority at a belated stage should be rejected inasmuch as it seeks to disturb the vested rights of other persons regarding seniority, rank and promotion which have accrued to them during the intervening period. A party should approach the court just after accrual of the cause of complaint. While deciding the said case, this Court placed reliance upon its earlier judgments, particularly in *Tilokchand Motichand* v. *H.B. Munshi*, wherein it has been observed that the principle on which the court proceeds in refusing relief to the petitioner on the ground of laches or delay, is that the rights, which have accrued to others by reason of delay in filing the writ petition should not be allowed to be disturbed unless there is a reasonable explanation for delay. The Court further observed as under : (*Tilokchand case*, SCC p. 115, para 7)
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> "*7.* … The party claiming fundamental rights must move the Court before other rights come into existence. The action of courts cannot harm innocent parties if their rights emerge by reason of delay on the part of the person moving the Court."
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> **19.** This Court in *Ramchandra Shankar Deodhar case* also placed reliance upon its earlier judgment of the Constitution Bench in *Rabindranath Bose* v. *Union of India*, wherein it has been observed as under : (*Rabindranath Bose case*, SCC p. 97, para 33)
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> "*33*. … 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."

20. In *R.S. Makashi* v. *I.M. Menon* this Court considered all aspects of limitation, delay and laches in filing the writ petition in respect of inter se seniority of the employees. The Court referred to its earlier judgment in *State of M.P.* v. *Bhailal Bhai*, wherein it has been observed that the maximum period fixed by the legislature as the time within which the relief by a suit in a civil court must be brought, may ordinarily be taken to be a reasonable standard by which delay in seeking the remedy under Article 226 of the Constitution can be measured. The Court observed as under : (*R.S. Makashi case*, SCC pp. 398-400, paras 28 & 30)

"*28*. … '*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. …'

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30. … The petitioners have not furnished any valid explanation whatever for the inordinate delay on their part in approaching the court with the challenge against the seniority principles laid down in the Government Resolution of 1968. … We would accordingly hold that the challenge raised by the petitioners against the seniority principles laid down in the Government Resolution of 22-3-1968 ought to have been rejected by the High Court on the ground of delay and laches and the writ petition insofar as it related to the prayer for quashing the said Government Resolution should have been dismissed."

21. The issue of challenging the seniority list, which continued to be in existence for a long time, was again considered by this Court in *K.R. Mudgal* v. *R.P. Singh*. The Court held as under : (SCC pp. 532 & 536, paras 2 & 7)

"*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*. …

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7. … Satisfactory service conditions postulate that there should be no sense of uncertainty amongst the government servants created by writ petitions filed after several years as in this case. *It is essential that anyone 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."

(emphasis added)

22. While deciding *K.R. Mudgal case*, this Court placed reliance upon its earlier judgment in *Malcom Lawrence Cecil D'Souza* v. *Union of India*, wherein it had been observed as under : (*Cecil D'Souza case*, SCC p. 602, para 9)

"*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* 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."

(emphasis added)

23. In *B.S. Bajwa* v. *State of Punjab* this Court while deciding the similar issue reiterated the same view, observing as under : (SCC p. 526, para 7)

"*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. There was inordinate delay in the present case for making such a

grievance. This alone was sufficient to decline interference under Article 226 and to reject the writ petition."

(emphasis added)

24. In *Dayaram A. Gursahani* v. *State of Maharashtra*, while reiterating the similar view this 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.

25. In *P.S. Sadasivaswamy* v. *State of T.N.* this Court considered the case where the petition was filed after a lapse of fourteen years challenging the promotion. However, this Court held that the aggrieved person must approach the Court expeditiously for relief and it is not permissible to put forward stale claim. The Court observed as under : (SCC p. 154, para 2)

"*2*. … 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."

The Court further observed that it was not that there was 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.

26. A similar view has been reiterated by this Court in *Sudama Devi* v. *Commr.*; *State of U.P.* v. *Raj Bahadur Singh* and *Northern Indian Glass Industries* v. *Jaswant Singh*.

27. In *Dinkar Anna Patil* v. *State of Maharashtra* this Court held that delay and laches in challenging the seniority is always fatal, but in case the party satisfies the Court regarding delay, the case may be considered.

28. In *K.A. Abdul Majeed* v. *State of Kerala* this Court held that seniority assigned to any employee could not be challenged after a lapse of seven years on the ground that his initial appointment had been irregular, though even on merit it was

found that seniority of the petitioner therein had correctly been fixed.

29. It is settled law that fence-sitters cannot be allowed to raise the dispute or challenge the 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. (Vide *Aflatoon* v. *Lt. Governor of Delhi*; *State of Mysore* v. *V.K. Kangan*; *Municipal Council, Ahmednagar* v. *Shah Hyder Beig*; *Inder Jit Gupta* v. *Union of India*; *Shiv Dass* v. *Union of India*; *A.P. SRTC* v. *N. Satyanarayana* and *City and Industrial Development Corpn.* v. *Dosu Aardeshir Bhiwandiwala*).

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, 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.

The Supreme Court in the case of **Malcom Lawrence Cecil D'Souza v. Union of India, (1976) 1 SCC 599** has held as under :

8. The matter can also be looked at from another angle. The seniority of the petitioner qua Respondents 4 to 26 was determined as long ago as 1956 in accordance with 1952 Rules. The said seniority was reiterated in the seniority list issued in 1958. The present writ petition was filed in 1971.The petitioner, in our opinion, cannot be allowed to challenge the seniority list after lapse of so many years……..

The Supreme Court in the case of **Vijay Kumar Kaul v. Union of India,** reported in **(2012) 7 SCC 610** has held as under :

> **23.** It is necessary to keep in mind that a claim for seniority is to be put forth within a reasonable period of time. In this context, we may refer to the decision of this Court in *P.S. Sadasivaswamy* v. *State of T.N.* wherein a two-Judge Bench has held thus : (SCC p. 154, para 2)
>
> "*2*. … It is not that there is any period of limitation for the courts to exercise their powers under Article 226 nor is it that there can never be a case where the courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion 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 claims and try to unsettle settled matters."
>
> **24.** In *Karnataka Power Corpn. Ltd.* v. *K. Thangappan* this Court had held thus that : (SCC p. 325, para 6)
>
> "*6*. Delay or laches is one of the factors which is to be borne in mind by the High Court when they exercise their discretionary powers under Article 226 of the Constitution. In an appropriate case the High Court may refuse to invoke its extraordinary powers if there is such negligence or omission on the part of the applicant to assert his right as taken in conjunction with the lapse of time and other circumstances, causes prejudice to the opposite party. Even where fundamental right is involved the matter is still within the discretion of the court as pointed out in *Durga Prashad* v. *Controller of Imports and Export*. Of course, the discretion has to be exercised judicially and reasonably."
>
> **25.** In *City and Industrial Development Corpn.* v. *Dosu Aardeshir Bhiwandiwala* this Court has opined that : (SCC p. 174, para 26)
>
> "*26*. … One of the grounds for refusing relief is that the person approaching the High Court is guilty of unexplained delay and the laches. Inordinate delay in moving the court for a writ is an adequate ground for refusing a writ. The principle is that the courts exercising public law jurisdiction do not encourage

> agitation of stale claims and exhuming matters where the rights of third parties may have accrued in the interregnum."
>
> **26.** From the aforesaid pronouncement of law, it is manifest that a litigant who invokes the jurisdiction of a court for claiming seniority, it is obligatory on his part to come to the court at the earliest or at least within a reasonable span of time. The belated approach is impermissible as in the meantime interest of third parties gets ripened and further interference after enormous delay is likely to usher in a state of anarchy.
>
> **27.** The acts done during the interregnum are to be kept in mind and should not be lightly brushed aside. It becomes an obligation to take into consideration the balance of justice or injustice in entertaining the petition or declining it on the ground of delay and laches. It is a matter of great significance that at one point of time equity that existed in favour of one melts into total insignificance and paves the path of extinction with the passage of time.

15. Thus, it is held that the representation made by the respondents no. 4 and 5 on 24-5-2016 suffered from delay and laches and the respondents no. 1 to 3 should not have entertained the same.

Whether the representation made by the Petitioner against the order dated 17-11-2016 was belated or not?

16. On 27-11-2015, the impugned order was passed and the respondents no. 4 and 5 were placed over and above the petitioner. A provisional gradation list was published on 6-9-2017 with a liberty to make representation within a period of 15 days. Admittedly, the petitioner did not raise any objection. Thereafter, final gradation list was prepared on 16-3-2018, but the petitioner did not raise the objection immediately and ultimately he made a representation only on 16-3-2021. Now the only question is that whether the representation made on 16-3-2021 can be said to belated or not?

17. As already observed in the previous paragraphs, the aggrieved employee must challenge the seniority list within reasonable time and delayed challenge to the seniority list should not be entertained. The provisional Gradation List was issued on 16-9-2017 and the Gradation list showing the position as on 1-8-2018 was issued in the year 2018. This Court cannot lose sight of the fact that nation wide lockdown was imposed on 24-3-2020. Accordingly, the Supreme Court had also extended the period of limitation. Thus, for all practical purposes, it can be said that the petitioner had moved his representation within a period of approximately 1 ½ years of the issuance of gradation list showing the position as on 1-8-2018. Therefore, it cannot be said that the representation made by the petitioner against the placement of respondents no 4 and 5 over and above the petitioner was belated. Thus, the objection raised by the respondents with regard to delayed representation by the petitioner is hereby rejected, and it is held that the representation made by the petitioner was within reasonable time.

Whether the order dated 17-11-2016 is bad in law on account of non–grant of opportunity to the Petitioner or not?

18. The undisputed fact is that while considering the representations made by the respondents no. 4 and 5 for upgradation of their position in gradation list, no opportunity of hearing was given to the petitioner. Now the only question for consideration is as to whether the petitioner, who was likely to be adversely effected, was entitled for opportunity of hearing or not, or whether post decisional hearing would be sufficient to follow the principles of natural justice?

19. The Supreme Court in the case of **H.L. Trehan and others Vs. Union of India and others** reported in **(1989) 1 SCC 764** has held as under :

> **11.** One of the contentions that was urged by Respondents 1 to 4 before the High Court at the hearing of the writ petition, as noticed above, is that unguided and arbitrary powers have been vested in the official by sub-section (1) of Section 11 for the alteration of the terms and conditions of service of the employees. It has been observed by the High Court that although the terms and conditions of service could be altered by CORIL, but such alteration has to be made "duly" as provided in sub-section (2) of Section 11 of the Act. The High Court has placed reliance upon the ordinary dictionary meaning of the word "duly" which, according to *Concise Oxford Dictionary*, means "rightly, properly, fitly" and according to Stroud's *Judicial Dictionary*, 4th Edn., the word "duly" means "done in due course and according to law". In our opinion, the word "duly" is very significant and excludes any arbitrary exercise of power under Section 11(2). It is now a well-established principle of law that there can be no deprivation or curtailment of any existing right, advantage or benefit enjoyed by a government servant without complying with the rules of natural justice by giving the government servant concerned an opportunity of being heard. Any arbitrary or whimsical exercise of power prejudicially affecting the existing conditions of service of a government servant will offend against the provision of Article 14 of the Constitution. Admittedly, the employees of CORIL were not given an opportunity of hearing or representing their case before the impugned circular was issued by the Board of Directors. The impugned circular cannot, therefore, be sustained as it offends against the rules of natural justice.
>
> **12.** It is, however, contended on behalf of CORIL that after the impugned circular was issued, an opportunity of hearing was given to the employees with regard to the alterations made in the conditions of their service by the impugned circular. In our opinion, the post-decisional opportunity of hearing does not subserve the rules of natural justice. The authority who embarks

upon a post-decisional hearing will naturally proceed with a closed mind and there is hardly any chance of getting a proper consideration of the representation at such a post-decisional opportunity. In this connection, we may refer to a recent decision of this Court in *K.I. Shephard* v. *Union of India*. What happened in that case was that the Hindustan Commercial Bank, the Bank of Cochin Ltd. and Lakshmi Commercial Bank, which were private banks, were amalgamated with Punjab National Bank, Canara Bank and State Bank of India respectively in terms of separate schemes drawn under Section 45 of the Banking Regulation Act, 1949. Pursuant to the schemes, certain employees of the first mentioned three banks were excluded from employment and their services were not taken over by the respective transferee banks. Such exclusion was made without giving the employees, whose services were terminated, an opportunity of being heard. Ranganath Misra, J. speaking for the court observed as follows: (SCC pp. 448-49, para 16)

> "We may now point out that the learned Single Judge for the Kerala High Court had proposed a post-amalgamation hearing to meet the situation but that has been vacated by the Division Bench. For the reasons we have indicated, there is no justification to think of a post-decisional hearing. On the other hand the normal rule should apply. It was also contended on behalf of the respondents that the excluded employees could not represent and their case could be examined. We do not think that would meet the ends of justice. They have already been thrown out of employment and having been deprived of livelihood they must be facing serious difficulties. There is no justification to throw them out of employment and then give them an opportunity of representation when the requirement is that they should have the opportunity referred to above as a condition precedent to action. It is common experience that once a decision has been taken, there is a tendency to uphold it and a representation may not really yield any fruitful purpose."

13. The view that has been taken by this Court in the above observation is that once a decision has been taken, there is a tendency to uphold it and a representation may not yield any fruitful purpose. Thus, even if any hearing was given to the

> employees of CORIL after the issuance of the impugned circular, that would not be any compliance with the rules of natural justice or avoid the mischief of arbitrariness as contemplated by Article 14 of the Constitution. The High Court, in our opinion, was perfectly justified in quashing the impugned circular.

The Supreme Court in the case of **Vijay Kumar Kaul (Supra)** has held as under :

> **36.** Another aspect needs to be highlighted. Neither before the Tribunal nor before the High Court, Parveen Kumar and others were arrayed as parties. There is no dispute over the factum that they are senior to the appellants and have been conferred the benefit of promotion to the higher posts. In their absence, if any direction is issued for fixation of seniority, that is likely to jeopardise their interest. When they have not been impleaded as parties such a relief is difficult to grant.
>
> **37.** In this context we may refer with profit to the decision in *Indu Shekhar Singh* v. *State of U.P.* wherein it has been held thus : (SCC p. 151, para 56)
>
> "*56*. There is another aspect of the matter. The appellants herein were not joined as parties in the writ petition filed by the respondents. In their absence, the High Court could not have determined the question of inter se seniority."
>
> **38.** In *Public Service Commission* v. *Mamta Bisht* this Court while dealing with the concept of necessary parties and the effect of non-impleadment of such a party in the matter when the selection process is assailed observed thus : (SCC pp. 207-08, paras 9-10)
>
> "*9*. … in *Udit Narain Singh Malpaharia* v. *Board of Revenue*, wherein the Court has explained the distinction between necessary party, proper party and pro forma party and further held that if a person who is likely to suffer from the order of the court and has not been impleaded as a party has a right to ignore the said order as it has been passed in violation of the principles of natural justice. More so, proviso to Order 1 Rule 9 of the Code of Civil Procedure, 1908 (hereinafter called 'CPC') provides that non-joinder of necessary party be fatal.

> Undoubtedly, provisions of CPC are not applicable in writ jurisdiction by virtue of the provision of Section 141 CPC but the principles enshrined therein are applicable. (Vide *Gulabchand Chhotalal Parikh* v. *State of Gujarat*, *Babubhai Muljibhai Patel* v. *Nandlal Khodidas Barot* and *Sarguja Transport Service* v. *STAT*.)
>
> *10*. In *Prabodh Verma* v. *State of U.P.* and *Tridip Kumar Dingal* v. *State of W.B.*, it has been held that if a person challenges the selection process, successful candidates or at least some of them are necessary parties."
>
> **39.** From the aforesaid enunciation of law there cannot be any trace of doubt that an affected party has to be impleaded so that the doctrine of audi alteram partem is not put into any hazard.

The Supreme Court in the case of **Public Service Commission v. Mamta Bisht,** reported in **(2010) 12 SCC 204** has held as under :

> **10.** In *Prabodh Verma* v. *State of U.P.* and *Tridip Kumar Dingal* v. *State of W.B.*, it has been held that if a person challenges the selection process, successful candidates or at least some of them are necessary parties.

The Supreme Court in the case of **Indu Shekhar Singh v. State of U.P.** reported in**, (2006) 8 SCC 129** has held as under :

> **22.** Seniority, as is well settled, is not a fundamental right. It is merely a civil right. (See *Bimlesh Tanwar* v. *State of Haryana*, SCC para 49 and also *Prafulla Kumar Das* v. *State of Orissa*.)

20. Right to Seniority is not a Fundamental Right, but it is merely a civil right. But, whenever, any representation is made against the Seniority, then the person likely to be adversely effected must be heard even by the Department as held in the case of **H.L.Trehan (Supra).** The persons likely to be adversely effected are necessary parties and disturbance of gradation list, without giving an opportunity of hearing to them, would

certainly vitiate the order by which the seniority is re-fixed. Therefore, the impugned order dated 17-11-2016 is bad in law on that ground also.

Whether a category wise (Unreserved/SC/ST/OBC) select list is to be prepared separately by the Commission or a consolidated select list, as per the merit is to be prepared, irrespective of category?

21. By referring to Rule 12 of M.P. Police (Gazetted) Recruitment Service Rules, 1987, it is submitted by Counsel for the respondents that "the Public Service Commission shall forward to the Government a list arranged in order of merit of candidates who have qualified by such standards as fixed by it and of candidates who belong to Scheduled Caste, Scheduled Tribes who though not qualified by that standard, are declared by the Commission to be suitable for the appointment to the service with due regard to the maintenance of efficiency of administration. The list shall also be published for general information." Thus, it is the contention of the Counsel for the respondents that a separate categorywise list is to be prepared by the Commission, therefore, the waitlisted candidate must be placed below the last person of the particular category and not below the last person of the select list.

22. The aforesaid contention of Counsel for respondents is misconceived and is liable to be rejected.

23. Rule 12(1) of M.P. Civil Services (General Conditions of Services) Rules, 1961 reads as under :

> 12. Seniority- The seniority of the members of a service or a distinct branch or group of posts of that service shall be determined in accordance with the following principles, viz.,-
>
> **(1) Seniority of Direct Recruits and Promotees.** - (a) The seniority of persons directly appointed to a post according to rules shall be determined on the basis of the order of merit in which they are recommended for appointment irrespective of

the date of joining. Persons appointed as a result of an earlier selection shall be senior to those appointed as a result of a subsequent selection.

(b) Where promotions are made on the basis of selection by a Departmental Promotion Committee, the seniority of such promotees shall be in the order in which they are recommended for such promotion by the committee.

(c) Where promotions are made on the basis of seniority subject to rejection of the unfit, the seniority of persons considered fit for promotion at the same time shall be the same as the relative seniority in the lower grade from which they are promoted. Where however a person is considered as unfit for promotion and is superseded by a junior, such person shall not, if subsequently found suitable and promoted, take seniority in the Higher grade over the junior persons who had superseded him.

(d) The seniority of a person whose case was deferred by the Departmental Promotion Committee for lack of Annual Character Rolls or for any other reasons but subsequently found fit to be promoted from the date on which his junior was promoted, shall be counted from the date of promotion of his immediate junior in the select list or from the date on which he is found fit to be promoted by the Departmental Promotion Committee.

(e) The relative seniority between direct recruits and promotees shall be determined according to the date of issue of appointment/promotion order :

Provided that if a person is appointed/promoted on the basis of roster earlier than his senior, seniority of such person shall be determined according to the merit/select/fit list prepared by the appropriate authority.

(f) If the period of probation of any direct recruit or the testing period of any promotee is extended, the appointing authority shall determine whether he should be assigned the same seniority as would have been assigned to him if he had completed the normal period of probation testing period successfully, or whether he -should be assigned a lower seniority.

(g) If orders of direct recruitment and promotion are issued on the same date, promotee persons enblock shall be treated as senior to the direct recruitees……..

24. Rule 12(1) of M.P. Civil Services (General Conditions of Services), Rules 1961 (unamended), which has been placed on record as Annexure R/6 by respondents no. 1 and 2 reads as under :

12. ज्येष्ठता : किसी सेवा या उस सेवा के पदों की निम्न शाखा या वर्ग के सदस्यों की ज्येष्ठता निम्नलिखित सिद्वांतों के अनुसार विनिशचित होगी, अर्थात्

क. सीधे रंगरूट

1. सीधे भर्ती किए गए और परिवीक्षाधीन नियुक्त शासकीय कर्मचारी की ज्येष्ठता उसके परीवीक्षा काल मे उसकी नियुक्ति के दिनांक से गिनी जायेगी परन्तु उपबंध यह है कि जब परिवीक्षाधीन नियुक्ति के लिए एक ही समय पर एक से अधिक व्यक्ति चुने गये हों, तो इस प्रकार चुने गए व्यक्तियों की परस्पर ज्येष्ठता उन प्रकरणों मे जहां कि आयोग से परामर्श के उपरांत नियुक्तियां की गई हो, आयोग द्वारा जिस योग्यता क्रम मे नियुक्ति के लिये सिफारिश की गई हो तो उस क्रम के अनुसार और अन्य प्रकरणों मे चुनाव के समय नियुक्त प्राधिकारी द्वारा विनिशचित योग्यता क्रम के अनुसार होगी.....

2. परिवीक्षा कि सामान्य काल के अंत मे स्थायीकरण पर परस्पर ज्येष्ठता का पूवर्वत क्रम संयुक्त होगा। तथापि यदि किसी सीधी भर्ती किए गये रंगरूट का परिवीक्षा काल बढा दिया गया हो तो नियुक्ति प्राधिकारी विनिश्चित करेगा कि उसे वही ज्येष्ठता अभिहस्तांतरित की (सौंपी) जावे जैसी कि परिवीक्षा के सामान्य काल की समाप्ति पर स्थायीकृत की जाती अथवा उसे निम्न (अवर)ज्येष्ठता अभिहस्तांतरित की जावे।.....

25. If Rule 12 of M.P. Civil Services (General Conditions of Services) Rules, 1961 (Amended) as well as Rule 12 of M.P. Civil Services (General Conditions of Services) Rules, 1961 (Unamended) are read, then it is clear that the seniority is to be reckoned from date of recommendation for appointment and not from the date of joining.

26. Rule 12 of M.P. Police (Gazetted) Recruitment Service Rules, 1987, provides that the Public Service Commission shall forward to the Government a list arranged in order of merit of candidates who have qualified by such standards as fixed by it and of candidates who belong to

Scheduled Caste, Scheduled Tribes who though not qualified by that standard, are declared by the Commission to be suitable for the appointment to the service with due regard to the maintenance of efficiency of administration. The list shall also be published for general information.

27. Although the contention of the Counsel for the respondents is that a separate select list shall be prepared in respect of candidates of unreserved category, SC category, ST category, but the Counsel for the respondents could not point out any provision in aforementioned rules to indicate that separate select list shall be prepared as per categories. It is fairly conceded by Counsel for the respondents that the word "separately" or "separate" has not been mentioned in the rules. It is well established principle of law that when the language is clear and unambiguous, then the Courts should not add or subtract any word in the Statute/Rule.

The Supreme Court in the case of **Hardeep Singh v. State of Punjab,** reported in **(2014) 3 SCC 92** has held as under :

> **43.** The court cannot proceed with an assumption that the legislature enacting the statute has committed a mistake and where the language of the statute is plain and unambiguous, the court cannot go behind the language of the statute so as to add or subtract a word playing the role of a political reformer or of a wise counsel to the legislature. The court has to proceed on the footing that the legislature intended what it has said and even if there is some defect in the phraseology, etc., it is for others than the court to remedy that defect. The statute requires to be interpreted without doing any violence to the language used therein. The court cannot rewrite, recast or reframe the legislation for the reason that it has no power to legislate.
>
> **44.** No word in a statute has to be construed as surplusage. No word can be rendered ineffective or purposeless. Courts are required to carry out the legislative intent fully and completely.

While construing a provision, full effect is to be given to the language used therein, giving reference to the context and other provisions of the statute. By construction, a provision should not be reduced to a "dead letter" or "useless lumber". An interpretation which renders a provision otiose should be avoided otherwise it would mean that in enacting such a provision, the legislature was involved in "an exercise in futility" and the product came as a "purposeless piece" of legislation and that the provision had been enacted without any purpose and the entire exercise to enact such a provision was "most unwarranted besides being uncharitable". (Vide *Patel Chunibhai Dajibha* v. *Narayanrao Khanderao Jambekar*, *Martin Burn Ltd.* v. *Corpn. of Calcutta*, *M.V. Elisabeth* v. *Harwan Investment and Trading (P) Ltd.*, *Sultana Begum* v. *Prem Chand Jain*, *State of Bihar* v. *Bihar Distillery Ltd.*, *Institute of Chartered Accountants of India* v. *Price Waterhouse* and *South Central Railway Employees Coop. Credit Society Employees' Union* v. *Registrar of Coop. Societies*.)

The Supreme Court in the case of ***Rohitash Kumar v. Om Prakash Sharma ,****reported in* ***(2013) 11 SCC 451*** *has held as under :*

Hardship of an individual

23. There may be a statutory provision, which causes great hardship or inconvenience to either the party concerned, or to an individual, but the court has no choice but to enforce it in full rigour. It is a well-settled principle of interpretation that hardship or inconvenience caused cannot be used as a basis to alter the meaning of the language employed by the legislature, if such meaning is clear upon a bare perusal of the statute. If the language is plain and hence allows only one meaning, the same has to be given effect to, even if it causes hardship or possible injustice. [Vide *CIT (Ag)* v. *Keshab Chandra Mandal* and *D.D. Joshi* v. *Union of India*.]

24. In *Bengal Immunity Co. Ltd.* v. *State of Bihar* (SCC p. 685, para 43) it was observed by a Constitution Bench of this Court that, if there is any hardship, it is for the legislature to amend the law, and that the court cannot be called upon to discard the cardinal rule of interpretation for the purpose of mitigating such

hardship. If the language of an Act is sufficiently clear, the court has to give effect to it, however inequitable or unjust the result may be. The words, "*dura lex sed lex*" which mean "the law is hard but it is the law" may be used to sum up the situation. Therefore, even if a statutory provision causes hardship to some people, it is not for the court to amend the law. A legal enactment must be interpreted in its plain and literal sense, as that is the first principle of interpretation.

25. In *Mysore SEB* v. *Bangalore Woollen Cotton & Silk Mills Ltd.* (AIR p. 1139, para 27) a Constitution Bench of this Court held that, "inconvenience is not" a decisive factor to be considered while interpreting a statute. In *Martin Burn Ltd.* v. *Corpn. of Calcutta* this Court, while dealing with the same issue observed as under : (AIR p. 535, para 14)

"*14*. … A result flowing from a statutory provision is never an evil. A court has no power to ignore that provision to relieve what it considers a distress resulting from its operation. A statute must of course be given effect to whether a court likes the result or not."

(See also *CIT* v. *Vegetables Products Ltd.* and *Tata Power Co. Ltd.* v. *Reliance Energy Ltd.*)

26. Therefore, it is evident that the hardship caused to an individual, cannot be a ground for not giving effective and grammatical meaning to every word of the provision, if the language used therein is unequivocal.

Addition and subtraction of words

27. The court has to keep in mind the fact that, while interpreting the provisions of a statute, it can neither add, nor subtract even a single word. The legal maxim "*A verbis legis non est recedendum*" means, "from the words of law, there must be no departure". A section is to be interpreted by reading all of its parts together, and it is not permissible to omit any part 461thereof. The court cannot proceed with the assumption that the legislature, while enacting the statute has committed a mistake; it must proceed on the footing that the legislature intended what it has said; even if there is some defect in the phraseology used by it in framing the statute, and it is not open to the court to *add and amend*, or by construction, make up for the deficiencies, which have been left in the Act. The Court can

> only iron out the creases but while doing so, it must not alter the fabric, of which an Act is woven. The Court, while interpreting statutory provisions, *cannot add words* to a statute, or *read words into* it which are not part of it, especially when a literal reading of the same produces an intelligible result. (Vide *Nalinakhya Bysack* v. *Shyam Sunder Haldar*, *Sri Ram Ram Narain Medhi* v. *State of Bombay*, *M. Pentiah* v. *Muddala Veeramallappa*, *Balasinor Nagrik Coop. Bank Ltd.* v. *Babubhai Shankerlal Pandya* and *Dadi Jagannadham* v. *Jammulu Ramulu*, SCC pp. 78-79, para 13.)
>
> **28.** The statute is not to be construed in light of certain notions that the legislature might have had in mind, or what the legislature is expected to have said, or what the legislature might have done, or what the duty of the legislature to have said or done was. The courts have to administer the law as they find it, and it is not permissible for the court to twist the clear language of the enactment in order to avoid any real or imaginary hardship which such literal interpretation may cause.
>
> **29.** In view of the above it becomes crystal clear that under the garb of interpreting the provision, the court does not have the power to add or subtract even a single word, as it would not amount to interpretation, but legislation.

The Supreme Court in the case of **Kotak Mahindra Bank Ltd. v. A. Balakrishnan**,reported in **(2022) 9 SCC 186** has held as under :

> **7.** It is more than well settled that when the language of a statutory provision is plain and unambiguous, it is not permissible for the Court to add or subtract words to a statute or read something into it which is not there. It cannot rewrite or recast legislation……..

28. Therefore, the word “Separate” or “Separately” cannot be added in Rule 12(1) of M.P. Civil Services (General Conditions of Services) Rules, 1961 or in Rule 12 of M.P. Police (Gazetted) Recruitment Service Rules, 1987.

29. Furthermore, as per Rule 12 of M.P. Civil Services (General Conditions of Services) Rules, 1961, the seniority has to be reckoned as per the recommendation for selection. The select list is the list of selected candidates and they are to be issued appointment order, whereas the supplementary list or the wait list is the list of those candidates, who could not make their way in the select list, but can be considered for their appointment in case if the selected candidate fails to submit his joining. Therefore, the person placed in the supplementary list cannot be said to be placed in select list. Mere inclusion of name in the supplementary list doesnot create any right to be appointed [Kindly see **The State of Karnataka vs. Smt. Bharati S.** decided on **19-5-2023 in C.A. No. 3062 of 2023**].

30. A wait list candidate does not have any indefeasible right to get appointment merely for the reason that his name finds place in the wait list. The Supreme Court in the case of **Sri Kant Tripathi v. State of U.P.**reported in **(2001) 10 SCC 237** has held that an applicant, whose name appears in the wait list, does not get an enforceable right for being appointed to a post. The Supreme Court in the case of **Surinder Singh v. State of Punjab,** reported in **(1997) 8 SCC 488**has held that "*Prem Singh case* was decided on the facts of that case and those facts do not hold good in the present case. In the case of *Gujarat State Dy. Executive Engineers' Assn.* the Supreme Court has explained the scope and intent of a waiting list and how it is to operate in service jurisprudence. It cannot be used as a perennial source of recruitment filling up the vacancies not advertised. The Court also did not approve the view of the High Court that since vacancies had not been worked out properly, therefore, the candidates from the waiting list were liable to be appointed. Candidates in

the waiting list have no vested right to be appointed except to the limited extent that when a candidate selected against the existing vacancy does not join for some reason and the waiting list is still operative. In the case of **State of J & K and Ors. v. Sanjeev Kumar and Ors**reported in **2005(1) SCC 148** the Supreme Court held " As it clearly spelt from the quoted portion, the Government can by a policy decision appoint people from the waiting list."

In the case of **Bihar State Electricity Board v. Suresh Prasad and Ors.** decided on **25-2-2004** in **C.A. No. 6084 of 1998** the Hon'ble Apex Court upheld non-preparation of any wait list where rules do not provide for preparation of a wait list and it was held that preparation of a wait list is not at all obligatory or mandatory unless the recruitment rules provide for preparation of a wait list in addition to the select list.The Supreme Court in the case of **Sonjay Bhattacharya Vs. Union of India** decided on **10-3-1997** in **S.L.P. (c) No. 6175 of 1997** has held that "merely because the petitioner has been put in the waiting list, he doesnot get any vested right to an appointment." The Supreme Court in the case **of K. Jayamohan Vs. State of Kerala** and another decided on **25th of April 1997** in **C.A. No. 3384 of 1997** has held that " a wait listed candidate has no right of appointment." Thus, it is clear that supplementary list or wait list cannot be equated with select list and supplementary list/wait list can be prepared only if the rules provide and not otherwise. Therefore, the contention of the Counsel for the respondents that by inclusion of names of respondents no. 4 and 5 in the supplementary list, they were recommended for appointment on the day one is misconceived and is hereby rejected.

31. It is well established principle of law that the Court must avoid an interpretation which may lead to absurdity. The Supreme Court in the case of **Vivek Narayan Sharma (Demonetisation Case-5 J.) v. Union of India ,**reported in **(2023) 3 SCC 1** has held as under :**:**

> **137.** A statute must be construed having regard to the legislative intent. It has to be meaningful. A construction which leads to manifest absurdity must not be preferred to a construction which would fulfil the object and purport of the legislative intent.
>
> **138.** Aharon Barak, the former President of the Supreme Court of Israel, whose exposition of "doctrine of proportionality" has found approval by the Constitution Bench of this Court in *Modern Dental College & Research Centre*, to which we will refer to in the forthcoming paragraphs, in his commentary on "Purposive Interpretation in Law", has summarised "the goal of interpretation in law" as under:
>
> "At some point, we need to find an Archimedean foothold, external to the text, from which to answer that question. My answer is this : The goal of interpretation in law is to achieve the objective—in other words, the purpose—of law. The role of a system of interpretation in law is to choose, from among the semantic options for a given text, the meaning that best achieves the purpose of the text. Each legal text—will, contract, statute, and constitution—was chosen to achieve a social objective. Achieving this objective, achieving this purpose, is the goal of interpretation. The system of interpretation is the device and the means. It is a tool through which law achieves self-realisation. In interpreting a given text, which is, after all, what interpretation in law does, a system of interpretation must guarantee that the purpose of the norm trapped in the—in our terminology, the purpose of the text—will be achieved in the best way. Hence the requirement that the system of interpretation be a rational activity. A coin toss will not do. This is also the rationale—which is at the core of my own views—for the belief that purposive interpretation is the most proper system of interpretation. This system is proper because it guarantees the achievement of the purpose of law. There is

social, jurisprudential, hermeneutical, and constitutional support for my claim that the proper criterion for interpretation is the search for law's purpose, and that purposive interpretation best fulfils that criterion. A comparative look at the law supports it, as well. I will discuss each element of that support below."

139. The learned Judge emphasised that purposive interpretation is the most proper system of interpretation. He observed that this system is proper because it guarantees the achievement of the purpose of law. The proper criterion for interpretation is the search for law's purpose, and that purposive interpretation best fulfils that criterion.

140. The principle of purposive interpretation has also been expounded through a catena of judgments of this Court. A Constitution Bench of this Court in *M. Pentiah* v. *Muddala Veeramallappa* was considering a question, as to whether the term prescribed in Section 34 would apply to a member of a "deemed" committee under the provisions of the Hyderabad District Municipalities Act, 1956. An argument was put forth that, upon a correct interpretation of the provisions of Section 16, the same would be permissible. Rejecting the said argument, K. Subba Rao, J., observed thus : (AIR pp. 1110-11, para 6)

"*6*. Before we consider this argument in some detail, it will be convenient at this stage to notice some of the well-established rules of construction which would help us to steer clear of the complications created by the Act. *Maxwell on the Interpretation of Statutes*, 10th Edn., says at p. 7 thus:

'… if the choice is between two interpretations, the narrower of which would fail to achieve the manifest purpose of the legislation, we should avoid a construction which would reduce the legislation to futility and should rather accept the bolder construction based on the view that Parliament would legislate only for the purpose of bringing about an effective result.'

It is said in *Craies on Statute Law*, 5th Edn., at p. 82—

'Manifest absurdity or futility, palpable injustice, or absurd inconvenience or anomaly to be avoided.'

Lord Davey in *Canada Sugar Refining Co. Ltd.* v. *R.* provides another useful guide of correct perspective to such a problem in the following words : (AC p. 741)

'… Every clause of a statute should be construed with reference to the context and the other clauses of the Act, so as, so far as possible, to make a consistent enactment of the whole statute or series of statutes relating to the subject-matter.' "

141. A.K. Sarkar, J. in his concurring opinion observed thus : (*M. Pentiah case*, AIR p. 1115, para 27)

"*27*. There is no doubt that the Act raises some difficulty. It was certainly not intended that the members elected to the Committee under the repealed Act should be given a permanent tenure of office nor that there would be no elections under the new Act. Yet such a result would appear to follow if the language used in the new Act is strictly and literally interpreted. *It is however well established that*

'*Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence.… Where the main object and intention of a statute are clear, it must not be reduced to a nullity by the draftsman's unskilfulness or ignorance of the law, except in a case of necessity, or the absolute intractability of the language used*. Nevertheless, the courts are very reluctant to substitute words in a statute, or to add words to it, and it has been said that they will only do so where there is a repugnancy to good sense.' : see *Maxwell on Statutes* (10th Edn.) p. 229.

In *Seaford Court Estates Ltd.* v. *Asher*, KB at p. 499, Denning, L.J. said:

'… when a defect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament … and then he must supplement the written word so as to give "force and life" to the intention of the legislature. … A Judge should ask himself the question how, if the makers of the Act had

themselves come across this ruck in the texture of it, how would they have straightened it out? He must then do as they would have done. A Judge must not alter the material of which [the Act] is woven, but he can and should iron out the creases.' "

(emphasis supplied)

142. Another Constitution Bench judgment of this Court in *High Court of A.P.* v. *L.V.A. Dixitulu* reiterated the position in the following words : (SCC p. 53, para 67)

"*67*. Where two alternative constructions are possible, the court must choose the one which will be in accord with the other parts of the statute and ensure its smooth, harmonious working, and eschew the other which leads to absurdity, confusion, or friction, contradiction and conflict between its various provisions, or undermines, or tends to defeat or destroy the basic scheme and purpose of the enactment."

143. In *Girdhari Lal & Sons* v. *Balbir Nath Mathur*, O. Chinnappa Reddy, J. explained the position as under : (SCC p. 243, para 9)

"*9*. So we see that the primary and foremost task of a court in interpreting a statute is to ascertain the intention of the legislature, actual or imputed. Having ascertained the intention, the court must then strive to so interpret the statute as to promote or advance the object and purpose of the enactment. For this purpose, where necessary the court may even depart from the rule that plain words should be interpreted according to their plain meaning. There need be no meek and mute submission to the plainness of the language. To avoid patent injustice, anomaly or absurdity or to avoid invalidation of a law, the court would be well justified in departing from the so-called golden rule of construction so as to give effect to the object and purpose of the enactment by supplementing the written word if necessary."

144. After referring to various earlier judgments of other jurisdictions, his Lordship observed thus : (*Balbir Nath Mathur case*, SCC p. 246, para 16)

"*16. Our own court has generally taken the view that ascertainment of legislative intent is a basic rule of statutory construction and that a rule of construction should be preferred*

which advances the purpose and object of a legislation and that though a construction, according to plain language, should ordinarily be adopted, such a construction should not be adopted where it leads to anomalies, injustices or absurdities, vide *K.P. Varghese* v. *ITO*, *State Bank of Travancore* v. *Mohd. M. Khan*, *Som Prakash Rekhi* v. *Union of India*, *Ravula Subba Rao* v. *CIT*, *Govindlal Chhaganlal Patel* v. *Agricultural Produce Market Committee* and *Babaji Kondaji Garad* v. *Nasik Merchants Coop. Bank Ltd.*"

145. M.N. Venkatachaliah, J. speaking for the Constitution Bench of this Court in *Tinsukhia Electric Supply Co. Ltd.* v. *State of Assam* observed thus : (SCC p. 754, paras 118-20)

"*118*. The courts strongly lean against any construction which tends to reduce a statute to futility. The provision of a statute must be so construed as to make it effective and operative, on the principle *ut res magis valeat quam pereat*. It is, no doubt, true that if a statute is absolutely vague and its language wholly intractable and absolutely meaningless, the statute could be declared void for vagueness. This is not in judicial review by testing the law for arbitrariness or unreasonableness under Article 14; but what a court of construction, dealing with the language of a statute, does in order to ascertain from, and accord to, the statute the meaning and purpose which the legislature intended for it. In *Manchester Ship Canal Co.* v. *Manchester Racecourse Co.* Farwell, J. said : (pp. 360-61)

'… Unless the words were so absolutely senseless that I could do nothing at all with them, I should be bound to find some meaning, and not to declare them void for uncertainty.'

119. In *Fawcett Properties Ltd.* v. *Buckingham County Council* Lord Denning approving the dictum of Farwell, J., said : (Ch p. 849)

'… But when a statute has some meaning, even though it is obscure, or several meanings, even though there is little to choose between them, the courts have to say what meaning the statute to bear rather than reject it as a nullity.'

120. It is, therefore, the court's duty to make what it can of the statute, knowing that the statutes are meant to be operative and not inept and the nothing short of impossibility should allow a

court to declare a statute unworkable. In *Whitney* v. *IRC* Lord Dunedin said : (AC p. 52)

'… A statute is designed to be workable, and the interpretation thereof by a court should be to secure that object, unless crucial omission or clear direction makes that end unattainable.' "

146. In *State of Gujarat* v. *R.A. Mehta*, this Court held as under : (SCC pp. 47-48, para 98)

"*98*. The doctrine of purposive construction may be taken recourse to for the purpose of giving full effect to statutory provisions, and the courts must state what meaning the statute should bear, rather than rendering the statute a nullity, as statutes are meant to be operative and not inept. The courts must refrain from declaring a statute to be unworkable. *The rules of interpretation require that construction which carries forward the objectives of the statute, protects interest of the parties and keeps the remedy alive, should be preferred looking into the text and context of the statute. Construction given by the court must promote the object of the statute and serve the purpose for which it has been enacted and not efface its very purpose*. 'The courts strongly lean against any construction which tends to reduce a statute to futility. The provision of the statute must be so construed as to make it effective and operative.' *The court must take a pragmatic view and must keep in mind the purpose for which the statute was enacted as the purpose of law itself provides good guidance to courts as they interpret the true meaning of the Act and thus legislative futility must be ruled out*. A statute must be construed in such a manner so as to ensure that the Act itself does not become a dead letter and the obvious intention of the legislature does not stand defeated unless it leads to a case of absolute intractability in use. The court must adopt a construction which suppresses the mischief and advances the remedy and 'to suppress subtle inventions and evasions for continuance of the mischief, and *pro privato commodo*, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, *pro bono publico*'. The court must give effect to the purpose and object of the Act for the reason that legislature is presumed to have enacted a reasonable statute. (Vide *M. Pentiah* v. *Muddala Veeramallappa*, *S.P. Jain* v. *Krishna Mohan Gupta*,

> *RBI* v. *Peerless General Finance & Investment Co. Ltd.*, *Tinsukhia Electric Supply Co. Ltd.* v. *State of Assam*, SCC at p. 754, para 118; *UCO Bank* v. *Rajinder Lal Capoor* and *Grid Corpn. of Orissa Ltd.* v. *Eastern Metals & Ferro Alloys*.)"
>
> (emphasis supplied)
>
> **147.** The principle of purposive construction has been enunciated in various subsequent judgments of this Court. However, we would not like to burden this judgment with a plethora of citations. Suffice it to say, the law on the issue is very well crystallised.
>
> **148.** It is thus clear that it is a settled principle that the modern approach of interpretation is a pragmatic one, and not pedantic. An interpretation which advances the purpose of the Act and which ensures its smooth and harmonious working must be chosen and the other which leads to absurdity, or confusion, or friction, or contradiction and conflict between its various provisions, or undermines, or tends to defeat or destroy the basic scheme and purpose of the enactment must be eschewed. The primary and foremost task of the Court in interpreting a statute is to gather the intention of the legislature, actual or imputed. Having ascertained the intention, it is the duty of the Court to strive to so interpret the statute as to promote or advance the object and purpose of the enactment. For this purpose, where necessary, the Court may even depart from the rule that plain words should be interpreted according to their plain meaning. There need be no meek and mute submission to the plainness of the language. To avoid patent injustice, anomaly or absurdity or to avoid invalidation of a law, the court would be justified in departing from the so-called golden rule of construction so as to give effect to the object and purpose of the enactment. Ascertainment of legislative intent is the basic rule of statutory construction.

32. If a waitlisted candidate is held to have been recommended by the PSC for appointment on day one, then it would lead to absurdity as it has happened in the present case. A wait listed candidate who was initially not offered appointment, but on account of non-joining by the selected

candidate, is given appointment, then he cannot be treated as a part of the original select list. A wait listed candidate is always offered appointment only after the entire select list is exhausted and still some vacancy remains on account of non-joining by some of the selected candidates. If the wait listed candidate is considered to be a part and parcel of the select list, then they will become entitled for seniority from the date, even when they were not in service at all, because they will claim their position in the select list just below the candidate who was more meritorious then them. A candidate cannot be given seniority from the date when he was not born in the cadre itself. Therefore, the interpretation suggested by the petitioner would lead to absurdity which cannot be accepted.

33. The Supreme Court in the case of **State of J&K v. Sat Pal** reported in **(2013) 11 SCC 737**has held as under :

> 11…A waiting list would commence to operate when offers of appointment have been issued to those emerging on the top of the merit list. The existence of a waiting list allows room to the appointing authority to fill up vacancies which arise during the subsistence of the waiting list. A waiting list commences to operate after the vacancies for which the recruitment process has been conducted have been filled up……

34. Thus, the contention of the Counsel for the Petitioner that separate select list is to be prepared for each and every category and the wait listed candidate is to be placed at the bottom of the select list of such category, cannot be accepted. Apart from the fact that Rule 12(1) of Rules 1961 donot provide for preparation of separate select list for every category, this Court is of the considered opinion, that if the interpretation suggested by the Counsel for the Respondents is accepted, then it would lead to absurdity, because the candidate placed in wait list would march over the

candidate who was placed in the select list. Therefore, the contention that separate select list is to be prepared for every and every category is hereby rejected.

Whether the waitlisted candidate has to be placed below the last selected candidate of a particular category or the waitlisted candidate has to be placed below the last candidate placed in the select list irrespective of his category?

35. This Court has already come to a conclusion that a consolidated select list of all meritorious candidates, whether they belong to Unreserved Category or Reserved Category is to be prepared. Under these circumstances, any candidate who was placed in wait list, and got appointment on account of non-joining by a selected candidate has to be given seniority below the candidate who was selected and offered appointment at the very first instance. The wait listed candidate cannot claim that he should be placed below the candidate belonging to a particular category. Rule 12(1) of Rules, 1961 which provides that date of joining will not be relevant is confined to select list only and will not apply to the candidates who were placed in wait list and later on got appointment on account of non-joining by selected candidate. Thus, it is held that the wait listed candidate has to be placed below the last candidate placed in the select list irrespective of his category.

Whether the waitlisted candidate can be given seniority from a date when he was even not borne in the cadre?

36. The aforesaid question is no more *res integra.* The Supreme Court in the case of **Nani Sha and others Vs. State of Arunanchal Pradesh and others** reported in **(2007) 15 SCC 406** has held as under :

> **15.** This Court in a reported judgment in *State of Uttaranchal* v. *Dinesh Kumar Sharma* has clearly held that the seniority is to

be reckoned not from the day when the vacancy arose but from the date on which the appointment is made to the post. There this Court was interpreting Rules 17 and 21 of the U.P. Agriculture Group B Service Rules, 1995 and Rule 8 of the U.P. Government Servants' Seniority Rules, 1991. This Court disapproved the stance taken by the High Court that the directions should have been given not from the date of appointment but with retrospective effect when the vacancy arose. The following observations in para 34 are speaking and would close the issue: (SCC pp. 691-92)

> "*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*"

(emphasis supplied)

16. Lastly, the High Court has specifically rejected the claim of the appellants on another ground, namely, that the appellants were not borne in the cadre of ACF on the date from which they have been given the seniority. We are in complete agreement with the High Court, particularly in view of the decision of this Court in *State of Bihar* v. *Akhouri Sachindra Nath* which decision was reiterated in *State of Bihar* v. *Bateshwar Sharma*. We do not want to burden this judgment with further reported decisions. However, the same view has been taken in another reported decision of this Court in *Uttaranchal Forest Rangers' Assn. (Direct Recruit)* v. *State of U.P.*where in para 18 this Court has taken a 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 be adversely affecting those who were appointed validly in the meantime.

The Supreme Court in the case of**Uttaranchal Forest Rangers' Assn. (Direct Recruit) v. State of U.P., (2006) 10 SCC 346** has held as under :

> **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* v. *Union of India* 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. The rule of quota being a statutory one, it must be strictly implemented and it is impermissible for the authorities concerned to deviate from the rule due to administrative exigencies or expediency. The result of pushing down the promotees appointed in excess of the quota may work out hardship, but it is unavoidable and any construction otherwise would be illegal, nullifying the force of the statutory rules and would offend Articles 14 and 16(1) of the Constitution.
>
> **38.** This Court has consistently held that no retrospective promotion can be granted nor any seniority can be given on retrospective basis from a date when an employee has not even borne in the cadre particularly when this would adversely affect the direct recruits who have been appointed validly in the meantime. In *State of Bihar* v. *Akhouri Sachindra Nath* this Court observed that: (SCC pp. 342-43, para 12)
>
> > "*12*. In the instant case, the promotee Respondents 6 to 23 were not borne in the cadre of Assistant Engineer in the Bihar Engineering Service, Class II at the time when Respondents 1 to 5 were directly recruited to the post of Assistant Engineer and as such they cannot be given seniority in the service of Assistant Engineers over Respondents 1 to 5. It is well settled that no person can be promoted with retrospective effect from a date when he

was not borne in the cadre so as to adversely affect others. It is well settled by several decisions of this Court that amongst members of the same grade seniority is reckoned from the date of their initial entry into the service. In other words, seniority inter se amongst the Assistant Engineers in Bihar Engineering Service, Class II will be considered from the date of the length of service rendered as Assistant Engineers. This being the position in law Respondents 6 to 23 cannot be made senior to Respondents 1 to 5 by the impugned government orders as they entered into the said service by promotion after Respondents 1 to 5 were directly recruited in the quota of direct recruits. The judgment of the High Court quashing the impugned government orders made in Annexures 8, 9 and 10 is unexceptionable."

39. In *Vinodanand Yadav* v. *State of Bihar* on an issue regarding the inter se seniority among the direct recruits and promotees this Court, applying the ratio of *State of Bihar* v. *Akhouri Sachindra Nath*, held that the appellants who were direct recruits shall be considered senior over the promotees not borne on the cadre when the direct recruits were appointed in service. Hence the gradation list drawn under which promotees were given seniority over direct recruits could not be sustained and was thereby set aside.

The Supreme Court in the case of **Sunaina Sharma v. State of J&K, (2018) 11 SCC 413 has held as under :**

11. At this stage, it would be pertinent to mention that it is a settled principle of law that normally no person can be promoted with retrospective effect from a date when he was not borne in the cadre. Seniority has to be reckoned only from the date the person entered into that service. In this behalf reference may be made to the judgment of this Court in *State of Bihar* v. *Akhouri Sachindra Nath* where this Court held as follows: (SCC p. 342, para 12)

"*12*. … It is well settled that no person can be promoted with retrospective effect from a date when he was not

> borne in the cadre so as to adversely affect others. It is well settled by several decisions of this Court that amongst members of the same grade seniority is reckoned from the date of their initial entry into the service."

Thereafter, in *Kaushal Kishore Singh* v. *Director of Education* this Court held as follows: (SCC p. 635, para 5)

> "*5*. The claim of seniority of the employee is always determined in any particular grade or cadre and it is not the law that seniority in one grade or cadre would be dependent on the seniority in another grade or cadre."

12. In *State of Uttaranchal* v. *Dinesh Kumar Sharma* this Court held as follows: (SCC pp. 691-92, para 34)

> "*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*."
>
> This principle was followed in *Sk. Abdul Rashid* v. *State of J&K* again dealing with J&K Civil Services Rules. Again in *State of U.P.* v. *Ashok Kumar Srivastava* this Court held that the normal rule is that seniority should be reckoned from the actual date of appointment. It was held thus: (*Ashok Kumar Srivastava case*, SCC p. 731, para 25)
>
> "*25*. In view of the aforesaid enunciation of law, the irresistible conclusion is that the claim of the first respondent for conferment of retrospective seniority is absolutely untenable and the High Court has fallen into error by granting him the said benefit and accordingly the impugned order deserves to be lancinated and we so do."

13. The respondents have relied upon two judgments in *U.D. Lama* v. *State of Sikkim* and *Asis Kumar Samanta* v. *State of*

W.B. In both the cases this Court upheld the grant of promotion from a retrospective date.

13.1. The facts in *U.D. Lama case* are very peculiar. The State of Sikkim was formed on 26-4-1975. The Sikkim State Civil Services Rules, 1977 came into force on 1-7-1977 which provided for consultation with the State Public Service Commission. Surprisingly however, there was no Public Service Commission in the State and Chairman to the Public Service Commission was appointed for the first time on 20-11-1981 and he assumed office on 11-1-1982. Prior to the constitution of the Commission, the State Government took a decision to induct officers into the State Public Service on the basis of a written examination and interview. Certain officers were selected and so appointed. The second set of officers were those who had been selected by the Sikkim Public Service Commission. The first set of officers were appointed in 1982 whereas the second set of officers were appointed in 1990 but the officers who were appointed in 1990 were given retrospective appointment from the date of vacancy. This Court held that the appointment of the first batch of officers though upheld by this Court in another case, having been made without consultation with the Commission, these officers appointed in violation of the Rules cannot claim seniority over those who had been appointed strictly in accordance with the Rules and in consultation with the Commission.

13.2. In *Asis Kumar Samanta case* also the situation was very unusual. Vacancies in the promotion quota occurred in 1-1-1989 but the promotions could not be made because of interim stay granted by the High Court. The stay order was vacated on 11-12-1990 and the selection process for promotions commenced only thereafter. In these circumstances the Public Service Commission recommended that the promotees be given retrospective seniority with effect from 31-12-1990 because for almost two years the promotion process had been stalled.

13.3. It would be pertinent to mention that in both these cases normal principle that seniority should be considered from the date of appointment has not been overruled but these judgments have been rendered in the peculiar facts and circumstances of these cases.

* * *

> **15.** From the judgments referred to hereinabove it is apparent that the normal rule is that a person is entitled to seniority only from the date when the said person actually joins the post. True it is, that there are exceptions and sometimes "in service" candidates can be granted promotion from a date anterior to their being regularly promoted/appointed. However, this can be done only if the rules enable retrospective appointment and on fulfilling the other requirement of the Rules.
> * * *
> **17.** In *Suraj Parkash Gupta case* this Court held that direct recruits could not claim seniority from a date anterior to their appointment. The reason is simple. The direct recruits were not even borne in the cadre and were not holding any post in the service. There can be no manner of doubt that direct recruits cannot get seniority from a date prior to their appointment……..

The Supreme Court in the case of **Ganga Vishan Gujrati v. State of Rajasthan,** reported in **(2019) 16 SCC 28**has held as under :

> **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*. The principle was reiterated by this Court in *State of Bihar* v. *Akhouri Sachindra Nath* and *State of Uttaranchal* v. *Dinesh Kumar Sharma*. In *Pawan Pratap Singh* v. *Reevan Singh*, this Court revisited the precedents on the subject and observed : (SCC pp. 281-82, para 45)
> "*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*.

37. As already pointed out, the Petitioner was appointed on the post of Dy.S.P. on 29-9-1997 whereas the Respondents no. 4 and 5 were appointed on the post of Dy.S.P. on 5-10-1998. By placing the Respondents no. 4 and 5 over and above the petitioner, the respondents have given seniority to the Respondents no. 4 and 5 from a date, on which even they were not born in the cadre.

38. Thus, it is held that a candidate cannot be given seniority from retrospective effect specifically atleast not from the date on which he was not even born in the cadre. Therefore, the order dated 17-11-2016 is bad on that count also.

Whether the respondents no. 4 and 5 were appointed on the post of Dy.S.P. after the expiry of wait list? If yes, then in absence of challenge to their appointment, its effect.

39. The Select list was published on 15-1-1997 and the life of the wait list was 18 months from the date of issuance of select list, therefore, the wait list lost its life on 14-7-1998, whereas the respondents no. 4 and 5 were given appointment on 5-10-1998. The contention of the Counsel for the respondents no. 4 and 5 that since, the procedure for appointment of the wait listed candidate had already begun much prior to expiry of wait list, therefore, their appointment even after the wait list had outlived its life can be made, is misconceived and cannot be accepted. The recruitment comes to an end with issuance of appointment order. Therefore, the appointment order has to be issued during the lifetime of the wait list. Merely because the process for giving appointment to the wait listed candidates had begun would not extend the life of the wait list. Therefore, the appointment of the respondents no.4 and 5 to the post of Dy.S.P. was after the wait list had already died its natural death. However, as the appointment of the respondents no. 4 and 5 has not been challenged and after 26 years, it would also not be proper to disturb the appointments of respondents no. 4 and 5, therefore, without leaving any adverse effect on the appointment of the respondents no. 4 and 5, it is held that they were appointed after the wait list had already lapsed.

Whether the order dated 17-11-2016 is an unreasoned order? If yes, then its effect?

40. In order dated 17-11-2016, the respondents after mentioning the provisions of law have directly jumped to a conclusion that the respondents no. 4 and 5 are liable to be placed over and above the

Petitioner. However, no reasons for coming to the said conclusion have been mentioned. Although the respondents no. 1 to 4 have tried to supplement the reasons by filing their return, but it is well established principle of law that reasons cannot be supplied at a later stage while defending their action. The Supreme Court in the case of **Mohinder Singh Gill Vs. Chief Election Commissioner,** reported in **(1978) 1 SCC 405** has held as under :

> **8.** The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in *Gordhandas Bhanji*:
>
> > "Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."
>
> Orders are not like old wine becoming better as they grow older.

41. Therefore, the order dated 17-11-2016 cannot be upheld on the aforesaid ground also.

42. It is next contended by Counsel for the respondents no. 4 and 5 that the petition is bad because the petitioner has adopted the policy of pick and choose. Along with the respondents no. 4 and 5, one Jitendra Singh Pawar was also given seniority over and above the petitioner, but he has

not challenged the same, therefore, the petition is liable to be dismissed on the said ground only.

43. Considered the submissions made by Counsel for respondents no. 4 and 5.

44. Undisputedly, Jitendra Singh Pawar was a wait listed candidate of 1993 recruitment Examination, whereas the respondents no. 4 and 5 are the wait listed candidates of 1995 Examination. As per Rule 12(1) of Rules, 1961,Persons appointed as a result of an earlier selection shall be senior to those appointed as a result of a subsequent selection. Thus, Jitendra Singh Pawar was rightly awarded Seniority over and above the Petitioner, therefore, the Petitioner has rightly not challenged his placement in seniority list. Under these circumstances, it cannot be said that the Petitioner has adopted the policy of pick and choose.

45. No other argument(s) is/are advanced by the Counsel for the Parties.

46. For the reasons mentioned above, this Court is of the considered opinion, that the respondents committed material illegality by placing the respondents no. 4 and 5 over and above the Petitioner in gradation list. Accordingly, the order dated 17-11-2016 (Annexure P/1) and order dated 21-9-2022 (Annexure P/15) cannot be given the stamp of Judicial approval. Therefore, the same are hereby **Quashed.** The respondents no. 1 to 3 are hereby directed to restore the position of the Petitioner as well as Respondents no. 4 and 5 which was there as per gradation list of the year 2014 i.e., the Respondents no. 4 and 5 be placed below the Petitioner.

47. As a consequence thereof, it is directed that the Respondents no. 4 and 5 shall not be entitled for any relief, which they could have claimed

on the basis of order dated 17-11-2016 i.e., modified gradation list. On the contrary, the claim of the Petitioner for all consequential benefits, shall be considered by treating him senior to the respondents no. 4 and 5.

48. With aforesaid directions, the petition succeeds and is hereby **allowed** with cost of Rs. 25,000/- each to be paid by the respondents no. 4 and 5. The cost be deposited before the Registry of this Court within a period of 1 month from today and the Petitioner shall be entitled to withdraw the same.

49. It is made clear that in case, if the cost is not deposited within the stipulated period, then Registrar General shall not only start proceedings for recovery of cost, but shall also register a case for Contempt of Court.

(G.S. AHLUWALIA)
JUDGE

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