

MD. ISRAILS AND ORS.
v.
STATE OF WEST BENGAL AND ORS.

JANUARY 7, 2002

[G.B. PATTANAİK AND Y.K. SABHARWAL, JJ.]

Service Law :

West Bengal Services (Determination of Seniority) Rules, 1981 : Rule 6.

West Bengal Public Service Commission (Exemption from Consultation) Regulations, 1995 : Section 3A

West Bengal Public Service Commission (Consultation by Governor) Regulation, 1955 : Regulation 3.

Seniority—State of West Bengal—Directorate of National Employment Service—Employment Officer—Direct recruits and promotees—Determination of inter se-seniority—Adhoc promotions in exigency of service—Appointment letter specifically stating that appointment was purely adhoc and subject to approval of Public Service Commission—Continuation without approval of Public Service Commission—Regularisation of appointment by Commission subsequently—Held, period of adhoc appointment to regularisation cannot be counted for determining seniority of promotees.

The dispute in this appeal pertains to determination of *inter-se* seniority between direct recruits and the promotees in the cadre of Employment Officer in the Directorate of National Employment Service in the State of West Bengal. On being selected by the West Bengal Public Service Commission, the appellants were appointed to the post of Employment Officer, as direct recruits, during the period 1976 to 1982. On the other hand respondents No. 6 to 30 were promoted during 1978-79 on *ad hoc* basis to the post of Employment Officer for a period of six months. Their letter of appointment on promotion unequivocally stated that the appointment was purely on *ad hoc* basis subject to the approval of the Public Service Commission and was liable to be terminated at any time without notice. As the Government continued the respondents beyond the period of six months without any approval of the Public Service Commission, the direct recruits filed a writ petition in the Calcutta

A High Court praying that *ad hoc* promotees should not be allowed to continue in the post without approval of the Public Service Commission. During the pendency of this writ petition the West Bengal Public Service Commission approved the promotion of respondents 6 to 30 to the post of Employment Officer with effect from 29th June, 1988. Consequently, State Government filed an affidavit in the pending writ petition praying that it may be allowed to prepare a gradation list including all the Employment Officers treating the *ad hoc* employees since regularised with effect from 29th June, 1988 on the basis of their continuous officiation. Rejecting the objection of the appellants, direct recruits, a Single Judge of the High Court dismissed the writ petition holding that the seniority of *ad hoc* promotees has to be counted from the initial date of appointment on promotion and not from the date of their regularisation. Thereafter the direct recruits approached the Division Bench in appeal which was also dismissed. Against the decision of High Court direct recruits preferred appeal before this Court. On their behalf it was contended that the High Court erred in directing that the *ad hoc* promotees would be entitled to count their seniority from the initial date of their *ad hoc* promotion because (1) the *ad hoc* promotion of respondents not being in accordance with the relevant statutory provisions contained in the Recruitment Rules read with the West Bengal Public Service Commission (consultation by Governor) Regulation of 1955 as well as the Exemption Regulations, the services rendered prior to the approval by the Public Service Commission cannot be counted for reckoning the seniority; (ii) under Rule 6 of the West Bengal Services (Determination of Seniority) Rules, 1981 thereof, the relative seniority between the promotee and direct recruit is required to be determined by the year of appointment or promotion of each of the promotee in the post, cadre or grade; it necessarily stipulates the year of regular promotion having been made in accordance with the Rules and not any *ad hoc* promotion made *de hors* the Rules; and (iii) there was unequivocal stipulation in the letter of appointment in case of *ad hoc* promotees that appointment and posting would be purely on an *ad hoc* basis subject to the approval of the Public Service Commission and was liable to be terminated at any time without any notice.

Allowing the appeal and setting aside the impugned judgment, the Court

HELD : 1. The *inter-se* seniority of the direct recruits-(appellants) and the promotees-(respondents 6 to 30) has to be worked out treating the services of the direct recruits from the date of their initial appointment and the services of the promotees from the date of their service being approved by the Public Service Commission and notified by the State Government w.e.f. June, 1988.

[26-G]

2. The post of Employment Officer by promotion, under the Recruitment Rules is required to be filled up only after consultation with the Public Service Commission. [23-G] A

3. The post of Employment Officer being a gazetted civil post, under Article 320 (3) of the Constitution, the State Public Service Commission is required to be consulted for filling up the post by promotion unless in exercise of power under the proviso to Article 320 (3) of the Constitution the Governor by way of making any Regulation specify the post for which it shall not be necessary for a Public Service Commission to be consulted. The Governor has framed a Regulation in exercise of such power in the State of West Bengal, called, "The West Bengal Public Service Commission (Consultation by Governor) Regulation, 1955, and Rule 3 thereof provides that so far as clauses (a) and (b) of Article 320(3) are concerned, if the Appointing Authority is not the State Government but is one subordinate to the State Government, then it shall not be necessary to consult the Public Service Commission. So far as the post of Employment Officer is concerned, the Appointing Authority being the State Government, consultation with the Public Service Commission is required to be made while making promotion, as provided under Article 320(3)(b) and the same does not go out of the purview of consultation with the Public Service Commission in view of the provisions contained in Regulation 3 of the West Bengal (Consultation by Governor) Regulation, 1955. B C D

[22-F-G-H; 23-A] E

4. The West Bengal Public Service Commission (Exemption from Consultation) Regulation, 1955 and Section 3A thereof unequivocally indicates that even if the State Government is the Appointing Authority in respect of the post, which is filled up by promotion, yet it will not be necessary to consult the Public Service Commission provided the maximum of the scale of pay of such post does not exceed Rs. 750 p.m. as per West Bengal Services (Revision of Pay and Allowances) Rules, 1970 and in the case of each post decision to exclude is taken in consultation with the Commission and a provision to that effect is incorporated in the relevant Recruitment Rules. A post of Employment Officer having a pay scale of more than Rs. 750 per month under the West Bengal Services (Revision of Pay & Allowances) Rules, 1970, and there being no decision to exclude the promotion to such post taken in consultation with the Commission, the conclusion is irresistible that for filling up the post of Employment Officer by promotion required consultation with the Public Service Commission. [23-B-C, E] F G

5. In view of the analysis of different provisions of Recruitment Rules, H

A the West Bengal Public Service Commission (Consultation by Governor) Regulation, West Bengal Public Service Commission (Exemption from consultation) Regulation, there is no doubt that the initial appointment of respondents 6 to 30, purely on *ad hoc* basis without consultation with the Public Service Commission cannot be held to be a regular service in the cadre of Employment Officer, and as such the same cannot be counted for the purposes of reckoning their seniority in the cadre. The order of promotion in favour of respondents 6 to 30 also categorically indicated that the promotion is purely on *ad hoc* basis and subject to the approval of the Public Service Commission. Consequently, the services rendered on such *ad hoc* basis till the approval of the Public Service Commission is obtained, will not count for reckoning the seniority in the cadre. [25-G-H; 26-A; 25-B-C]

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6. The question of seniority is governed by a set of rules called 'The West Bengal Services Determination of Seniority Rules, 1981, and under Rule 6 thereof relative seniority of direct recruits and promotees is required to be determined. The expression 'relative seniority' between a promotee and a direct recruit shall be determined by the year of appointment or promotion of each in the post, cadre or grade, irrespective of the date of joining would obviously mean the year of regular promotion and not any *ad hoc* promotion which is made contrary to the statutory rule. That being the position, so far as respondents 6 to 30 are concerned, their year of promotion would be 1988, the year when the Public Service Commission approved their promotion w.e.f. 29th June, 1988 and the State Government issued the necessary order on 11th August, 1988. [26-B-C]

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Suraj Prakash Gupta v. State of J & K, [2000] 7 SCC 561, referred to.

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Direct Recruit Class II Engineering Officers' Assn. v. State of Maharashtra & Ors., [1990] 2 Supreme Court Cases 715; *Masood Akhtar Khan & Ors. v. State of Madhya Pradesh & Ors.*, [1990] 4 Supreme Court Cases 24 and *M.K. Shanmugam & Anr. v. Union of India & Ors.*, [2000] 4 Supreme Court Cases 476, relied on.

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Suraj Prakash Gupta & Ors. v. State of J&K and Ors., [2000] 7 Supreme Court Cases 561, distinguished.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 879 of 1998.

From the Judgment and Order dated 18-4-96 of the Calcutta High Court in F.M.A.T. No. 3011 of 1989.

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Bhaskar Gupta, Rajesh Srivastava, Ujjawal Banerjee, Ms. A. Gupta for

H.K. Puri and S.K. Puri for the Appellants.

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Tapas Ray and R. Venkatramani, Avjit Bhattacharjee, Ms. Madhumita Bhattacharjee, Atanu Saikia and Sanjoy Kr. Ghosh for D.P. Mukherjee for the Respondents.

The Judgment of the Court was delivered by

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PATTANAİK, J. Never ending dispute of *inter se* seniority between the direct recruits and the promotees in a cadre has cropped up in this appeal, arising out of the judgment of the Division Bench of Calcutta High Court. The cadre in which the *inter se* seniority is required to be determined is the cadre of Employment Officer in the Directorate of National Employment Service in the State of West Bengal. The Governor of West Bengal has framed a set of Rules in exercise of power conferred under proviso to Article 309 of the Constitution providing the method of recruitment and the qualification required for the Gazetted post in the Directorate of National Employment Services (hereinafter referred to as 'The Recruitment Rules'). Under the Rules the cadre of Employment Officer could be filled up by direct recruitment on the results of West Bengal Civil Services (Executive and Allied Services) Examination for Group A as well as by promotion. For the promotion, the feeder category is the Junior Employment Officer, Superintendent and U.D. Clerk of the Directorate of NES West Bengal; Supdt. and U.D. Clerks of Regional Employment Exchanges and U.D. Clerks of the Sub-Regional and District Employment Exchange ; Inspectors of Statistics and Statistical Assistants. Under Rule 3 A (2) of the Recruitment Rules the ratio between the direct recruitment and the promotion is 50:50. For being eligible for promotion to the post of Employment Officer it is necessary that the person concerned should have 6 years' of qualifying service in the feeder post. During the period 1976 to 1982 the appellants were appointed as District Employment Officers, as direct recruits, on being selected by the West Bengal Public Service Commission on the basis of their results of the Recruitment examination held for the post in West Bengal Civil Service (Executive). On 2.10.1978 and 13.9.1979, Government issued two Notifications promoting 50 employees belonging to the feeder category on *ad hoc* basis to the post of Employment Officer for a period of 6 months, and respondents 6 to 30, the contesting respondents are included within the same 51. The letter of appointment on promotion unequivocally indicated that the appointment is purely on *ad hoc* basis subject to the approval of the Public Service Commission and is liable to be terminated at any time without notice. The post of Employment Officer being a post carrying

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A the pay scale of more than Rs.750 per month, for filling up those posts on promotional basis it was necessary to consult Public Service Commission, as required under Section 3A of the West Bengal Public Service Commission (Exemption from Consultation) Regulation 1955, (hereinafter referred to as "The Exemption Regulation"). As has been stated earlier, the post by direct recruitment is filled up on the basis of the competitive test held by the Public

B Service Commission for the West Bengal Civil Services. On 26.12.1980 the Labour Department of the Government of West Bengal moved the Public Service Commission for approving the panel of the 51 persons who had been promoted on *ad hoc* basis as District Employment Officers. Without the approval of the Public Service Commission and because of the exigency of

C service Government had promoted respondents 6 to 30 in 1980-81. As stated earlier, the appointment letter had unequivocally indicated that the same is on *ad hoc* basis for a period of 6 months with effect from the date the appointees' assume charges or until further order which ever is earlier, and the appointment is subject to the approval of the Public Service Commission and is liable to be terminated at any time without any notice. Notwithstanding the aforesaid

D terms and conditions in the appointment letter of the promotees, as Government continued them beyond the period of 6 months without any approval of the Public Service Commission, the direct recruits filed the Writ Petition in the Calcutta High Court with the prayer that the *ad hoc* promotees should not be allowed to continue in the post without approval of the Public Service

E Commission. In the year 1988 while the Writ Petition was pending in the High Court, the State Government forwarded the cases of the promotees to the Public Service Commission with the recommendation that their *ad hoc* promotion be approved and they be regularised with effect from the date of their *ad hoc* promotion. In the pending Writ Petition State Government filed its affidavit indicating therein that as the question of regularisation of respondents 6 to

F 30 has engaged the attention of the Public Service Commission, their *inter se* seniority in the cadre will be fixed in accordance with the West Bengal Services (Determination of Seniority) Rules, 1981 (hereinafter referred to as "Seniority Rules"), with due regard to the recommendation of the West Bengal Public Service Commission. The Seniority Rules of 1981 have been framed by

G the Governor in exercise of power conferred under proviso to Article 309 of the Constitution. Rule 6 is the relevant provision for determining relative seniority of direct recruits and promotees. The aforesaid Rules is extracted herein below in extenso:-

H "6. *Relative seniority of direct recruits and promotees*—(1) The relative seniority between a promotee and a direct recruit shall be

determined*by the year of appointment or promotion of each in the post, cadre or grade irrespective of the date of joining. A

(2) The promotees shall be en-bloc senior to the direct recruits of the same year."

The West Bengal Public Service Commission approved the promotion of respondents 6 to 30 to the post of Employment Officer with effect from 29th June, 1988 and in pursuance to the same Government of West Bengal in Labour Department issued letter on 18.8.1988 by which letter the Governor was pleased to decide that the appointment of 63 officers to the West Bengal Employment Service as Employment Officer be approved with effect from 29th June, 1988. On 30th March, 1989, consequently an affidavit was filed on behalf of the State in the pending Writ Petition and a prayer was made that the State Government be allowed to prepare a gradation list including all the Employment Officers treating the *ad hoc* employees since regularised with effect from 29th June, 1988, on the basis of their continuous officiation. The appellants, direct recruits filed a reply to the said affidavit filed on behalf of the State Government and respondents 6 to 30 also had filed a Supplementary Affidavit. The Writ Petition was dismissed by a learned Single Judge on a conclusion that the seniority of *ad hoc* promotees has to be counted from the initial date of appointment on promotion and not from the date of their regularisation, after obtaining approval of the Public Service Commission, as contended by the Writ Petitioner. The direct recruits thereafter approached the Division Bench in appeal, and that appeal having been dismissed, the present appeal has been preferred on grant of Special Leave. B
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Mr. Bhaskar Gupta, learned senior counsel appearing for the appellants contended, that the *ad hoc* promotion of respondents 6 to 30 not being in accordance with the relevant statutory provisions contained in the Recruitment Rules read with the West Bengal Public Service Commission (Consultation by Governor) Regulation of 1995 as well as the Exemption Regulations, the services rendered prior to the approval by the Public Service Commission cannot be counted for reckoning the seniority in the cadre and, therefore, the High Court was in error in holding that the *ad hoc* promotees would be entitled to count their seniority from the initial date of their *ad hoc* promotion. Mr. Gupta further contended that under the Seniority Rules, more specifically Rule 6 thereof, the relative seniority between the promotee and direct recruit being required to be determined by the year of appointment or promotion of each of the promotee in the post, cadre or grade. It necessarily stipulates the year of regular promotion having been made in accordance with the Rules and F
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A not any *ad hoc* promotion made de hors the Rules, and therefore, the High Court committed error by directing that even period of *ad hoc* promotion could be counted for reckoning the seniority in the cadre. The learned counsel urged that in view of unequivocal stipulation in the letter of appointment in case of *ad hoc* promotees that appointment and posting is purely on an *ad hoc* basis subject to the approval of the Public Service Commission and is liable to be terminated at any time without any notice and further the appointment initially having been made for a period of 6 months or until further order, which ever is earlier, it is highly illegal to count such period of service as a regular service in the cadre for the purpose of seniority, and consequently, the High Court committed grave error in directing that the said period would be reckoned for the purpose of seniority in the cadre of Employment Officer.

Mr. Tapas Ray, learned senior counsel appearing for the State of West Bengal, on the other hand submitted, that the Statutory Recruitment Rules do not require in terms that the Public Service Commission should be consulted for filling up the post of Employment Officer on promotion. In that view of the matter the Government itself having approached the Public Service Commission since December 1980 for the approval to the *ad hoc* promotion on, such *ad hoc* promotees should not suffer merely because Public Service Commission kept the matter pending for more than 8 years. The counsel next urged that the promotion being made according to the Recruitment Rules there is no rhyme or reason not to consider the *ad hoc* services for the purpose of seniority in the cadre and continuous length of service from the date of appointment should be the criteria for determining the seniority in the cadre, the High Court, therefore, did not commit any error. Mr. Ray lastly urged that the Writ Petition itself not having contained any prayer for determination of *inter se* seniority and the only prayer being that the *ad hoc* promotee should not be permitted to continue in the cadre without the approval of the Public Service Commission, and that approval having been accorded the Writ Petitions were rendered infructuous and, therefore the question of seniority ought not to have been considered.

Mr. Venkatramani, learned senior counsel appearing for respondents 6 to 30 argued with vehemence that the *ad hoc* promotees having got the essential pre requisites for being promoted, and they having been promoted after being duly selected, non approval of the Public Service Commission would not render the services rendered as void, and therefore, the High Court was fully justified in directing that the period of *ad hoc* services has to be counted for the purpose of seniority. Mr. Venkataramani further urged that there is no fetter on the power of the Appointing Authority from regularising

the *ad hoc* services from an interior date after consultation with the Public Service Commission with effect from the date when the vacancy in the promotee quota was available, and in the case in hand there being no case that the promotees were in excess of the 50% quota available for them, the High Court was fully justified in directing that the *ad hoc* services also has to be counted for reckoning their seniority in the cadre of Employment Officer. According to the learned counsel, the services rendered by *ad hoc* promotees without consultation with the Public Service Commission cannot be treated as non est and can be regularised from the date of the promotion, so long as substantive vacancy in the cadre within the promotee quota was available and that being the position, there is no error in the impugned judgment in the matter of determining the *inter se* seniority between the direct recruit and the promotees in the cadre of Employment Officer. In support of this contention the learned counsel relied upon several observations of this Court in the case of *Suraj Prakash Gupta v. State of J & K.*, [2000] 7 SCC 561. According to Mr. Venkataramani, the promotee Employment Officers having rendered continuous service in the cadre of Employment Officer, after being duly selected by the Appointing Authority, and such promotion having been made in the exigency of public service, even without consultation with the Public Service Commission as it could not brook any delay, it will be wholly inequitable to ignore the services from the date of promotion till 1988, the date on which the Public Service Commission accorded the approval. The rival submissions require a careful scrutiny of the relevant Rules and decisions of this Court indicating the principle on which seniority could be counted. But the moot question would be as to whether promotion to the post of Employment Officer being required to be made in consultation with the Public Service Commission under the Recruitment Rules, the period rendered prior to such approval can be counted for seniority? It may be stated that in the supplementary affidavit that was filed on behalf of the State Govt. in the High Court, though it was stated that the appointment of *ad hoc* officers were regularised after obtaining the approval of the Public Service Commission with effect from 29th June, 1988 by the Government order dated 18.8.1988, but a prayer was made to permit the Government to prepare a single Gradation List treating the former *ad hoc* officers who were then regularised as regular officers with effect from the dates of their continuous officiation.

A combined reading of the Recruitment Rules and the West Bengal Public Service Commission (Consultation by Governor) Regulation, 1955 as well as the Exemption Regulation of 1955 would unequivocally indicate that the post of Employment Officer could be filled up by promotion to the extent

A of 50% of the vacancies available in the cadre, after due consultation with the Public Service Commission. In fact the very appointment letter in favour of the respondents clearly indicated that the appointment is being made purely on *ad hoc* basis subject to the approval of the Public Service Commission. Then again the State Government being the Appointing Authority for the post of Employment Officer and the said post being a gazetted post with a pay scale of more than Rs. 750 per month, appointment by promotion could not be made without the approval of the Public Service Commission. It is in this context the questions raised are required to be answered.

C In view of the rival stand of the parties, the first question that requires to be answered is whether the promotion to the post of Employment Officer under the Recruitment Rules could be made by the State Government without consultation with the Public Service Commission? The Recruitment Rules merely provide that all the posts in the West Bengal National Employment Services excepting the post of Employment Officer (Technical) could be filled up either by direct recruitment or by promotion, the feeder category being the post mentioned in Clauses (a) to (e) of Rule 3(A) of the said Rules. The post of Employment Officer is undoubtedly a post borne in the West Bengal National Employment Service. The Recruitment Rules, unfortunately is totally silent as to how recruitment by promotion could be made to the said post of Employment Officer borne in the West Bengal National Employment Service, though so far as direct recruitment is concerned, it is categorical that it would be by selection on the results of the West Bengal Civil Services examination for Group A services which is conducted by the Public Service Commission. The post in question being a gazetted civil post, under Article 320(3) of the Constitution the State Public Service Commission is required to be consulted for filling up the post by promotion unless in exercise of power under the proviso to Article 320(3) of the Constitution the Governor by way of making any Regulation specify the post for which it shall not be necessary for a Public Service Commission to be consulted. The Governor has framed a Regulation in exercise of such power in the State of West Bengal, called, 'The West Bengal Public Service Commission (Consultation by Governor) Regulation, 1955, and Rule 3 thereof provides that so far as clauses (a) and (b) of Article 320 (3) are concerned, if the Appointing Authority is not the State Government but is one subordinate to the State Government, then it shall not be necessary to consult the Public Service Commission. So far as the post of Employment officer is concerned, the Appointing Authority being the State Government, consultation with the Public Service Commission is required to be made while making promotion, as provided under Article 320(3)(b) and the same does not

go out of the purview of consultation with the Public Service Commission in view of the provisions contained in Regulation 3 of the Consultation by Governor Regulation, 1955. There has been another order issued by the Governor, called The West Bengal Public Service Commission (Exemption from Consultation) Regulation, 1955 and Section 3A thereof unequivocally indicates that even if the State Government is the Appointing Authority in respect of the post, which is filled up by promotion, yet it will not be necessary to consult the Public Service Commission provided the maximum of the scale of pay of such post does not exceed Rs. 750 p.m. as per West Bengal Services (Revision of Pay and allowances) Rules, 1970 and in the case of each post decision to exclude is taken in consultation with the Commission and a provision to that effect is incorporated in the relevant Recruitment Rules. Rule 3A of the Exemption Regulation is extracted herein below in extenso:-

“Rule 3A.-It shall not be necessary to consult the Commission in regard to promotion to posts and services, the appointing authority of which is the State Government provided that the maximum of the scale of pay of such posts/services does not exceed Rs.750 per month as per West Bengal Services (Revision of Pay & Allowances) Rules, 1970 and provided further that the decision to exclude such promotion in the case of each post/service is taken in consultation with the Commission and a provision to that effect is incorporated in the relevant recruitment rules.”

A post of Employment Officer having a pay scale of more than Rs.750 per month under the West Bengal Services (Revision of Pay & Allowances) Rules, 1970, and there being no decision to exclude the promotion to such post taken in consultation with the Commission, the conclusion is irresistible that for filling up the post of Employment officer by promotion requires consultation with the Public Service Commission. It is also apparent from Rule 3 of the Recruitment Rules, which says that all the posts in the West Bengal National Employment Services excepting the post of Employment Officer (Technical) is required to be made under the procedure prescribed under the said Rules and for the post of Employment Officer (Technical) Rule 4 has been specifically provided. In view of the aforesaid legal provisions, we unhesitatingly hold that the post of Employment Officer by promotion, under the Recruitment Rules required to be filled up only after consultation with the Public Service Commission. In fact the very appointment letters in favour of respondents 6 to 30 categorically indicate the same.

A The next question that requires to be considered is, what would be the nature of services rendered by such promotees who were promoted on *ad hoc* basis prior to the consultation with the Public Service Commission, and whose appointment by promotion was approved by the Public Service Commission only on 29th June, 1988? In the Constitution bench decision of this Court in *Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra and Ors.*, [1990] 2 Supreme Court Cases 715, this Court after a thorough discussions of several earlier cases of the Court came to hold, that once an incumbent is appointed to a post according to the rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above Rule is, where the initial appointment is only *ad hoc* and not according to the rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority. According to Mr. Gupta, the learned counsel appearing for the appellant, the corollary would apply to the respondents 6 to 30 and, therefore, the officiation in the promoted post would not count for their seniority. According to Mr. Venkataramani, the corollary laid down in the case applies only to the case of a direct recruit and cannot have any application to the respondents 6 to 30. It is no doubt true, in the aforesaid case the question for consideration was whether in case of a direct recruit his seniority has to be counted from the date of his appointment or from the date of his confirmation, and the Court answered the same that it should be from the date of the appointment.

In *Masood Akhtar Khan and Ors. v. State of Madhya Pradesh & Ors.*, [1990] 4 Supreme Court Cases 24, which also dealt with the case of a direct recruit, the question for consideration was as to from what date the seniority in the cadre of an appointee could be considered? In that case also the very appointment letters indicate that the appointments are made for a period of 6 months, pending regular selection by Public Service Commission, and appointees, however, were allowed to continue beyond the period of 6 months and later on regularly selected by the Public Service Commission. This Court came to hold that the appointees, who have been allowed to continue beyond the period of 6 months and later on were regularly selected by the Public Service Commission can claim seniority from the date of their regular absorption in the cadre after being selected by the Public Service Commission, and services rendered from the date of their initial stop gap appointment till regular selection will not count for their seniority in the cadre.

In the case of *M.K. Shanmugam and Anr. v. Union of India & Ors.*, [2000] 4 Supreme Court Cases 476, this Court came to hold that any *ad hoc*

service does not count for seniority in the cadre and it can only count in those cases where the initial appointment, though *adhoc* is made by the same process, as is applicable to the regular appointment and is not a stop-gap appointment. In this case also the promotions had been made purely temporary and on *adhoc* basis and for a limited period and it had been made clear in promotion order that the promotion is subject to the approval of the Public Service Commission and would not confer any seniority. In the case in hand also the order of promotion in favour of respondents 6 to 30 categorically indicated that the promotion is purely on *adhoc* basis and subject to the approval of the Public Service Commission. Consequently the services rendered on such *adhoc* basis till the approval of the Public Service Commission is obtained, will not count for reckoning the seniority in the cadre. The only other decision which requires consideration is the judgment of this Court in *Suraj Prakash Gupta and Ors. v. State of J & K and Ors.*, [2000] 7 Supreme Court Cases 561, on which Mr. Venkataramani, learned senior counsel appearing for the private respondents strongly relied upon. Question no. 3 in this case was, whether *adhoc*, stop-gap promotion of Assistant Engineers could be made beyond 6 months and till regularisation, by the Government without consulting the Public Service Commission? And question 1(b) was whether the entire *adhoc* service of Assistant Engineers, who were promoted without consultation of the Public Service Commission can be counted for the purpose of seniority? So far as question no. 3 is concerned, the Court answered by referring to Regulation 4(d)(iii) of J&K Public Service Commission (Limitation of Functions) Regulations, 1957 and Rule 23 of the J&K Civil Services (CCA) Rules 1956, that the State Government has the power to regularise the services from an anterior date, as provided under Rule 23, and therefore, when appointment is made without consultation with the Public Service Commission, entire service will not be wiped off. This conclusion was possible because of the existence of Rule 23. In the case in hand we do not have any Rule corresponding to Rule 23, and therefore, the ratio of the aforesaid case will have no application. Mr. Venkataramani, however, vehemently urged that the observations made in the aforesaid case are of general nature and should apply to every case irrespective of existence of any Rule corresponding to Rule 23 of the J&K Civil Services (CCA) Rules. We are, however, not persuaded to accept this submission of learned counsel for the respondents. In view of the analysis of different provisions of Recruitment Rules, the West Bengal Public Service Commission (Consultation by Governor) Regulation, West Bengal Public Service Commission (Exemption from Consultation) Regulation, we have no doubt that the initial appointment of respondents 6 to 30, purely on *adhoc* basis without consultation with the Public Service Commission

A cannot be held to be a regular service in the cadre of Employment officer, and as such the same cannot be counted for the purposes of reckoning their seniority in the cadre.

B The question of seniority is governed by a set of rules called 'The West Bengal Services Determination of Seniority Rules, 1981' and under Rule 6 thereof relative seniority of direct recruits and promotees is required to be determined. The expression 'relative seniority' between a promotee and a direct recruit shall be determined by the year of appointment or promotion of each in the post, cadre or grade, irrespective of the date of joining would obviously mean the year of regular promotion and not any *ad hoc* promotion which is made contrary to the statutory rule. That being the position, so far as respondents 6 to 30 are concerned, their year of promotion would be 1988, the year when the Public Service Commission approved their promotion w.e.f. 29th June, 1988 and the State Government issued the necessary order on 11th August, 1988.

D It is true, as contended by Mr. Ray learned senior counsel appearing for the State of West Bengal, that in the Writ Petition filed by the direct recruits there was no prayer for determination of *inter se* seniority and the only prayer was not to allow the *ad hoc* promotee to continue in the cadre without approval of the Public Service Commission, but it is the State Government who filed an application seeking permission of the Court to draw up an integrated gradation list of direct recruits and promotees treating the *ad hoc* promotees to be in the cadre from their initial date of appointment and not from the date of their regular service after being approved by the Public Service Commission; and on this application the High Court considered the question of determination of *inter se* seniority between the direct recruits and *ad hoc* promotees. That being the position, it is difficult for us to accept the submission of Mr. Ray, learned senior counsel appearing for the State of West Bengal that the claim of *inter se* seniority need not be gone into in the present appeal.

G In the aforesaid premises, the impugned judgment of the Calcutta High Court, both of the learned Single Judge and that of a Division Bench are set aside and the appeal is allowed. It is held that the *inter se* seniority of the direct recruits-appellant and the promotees respondents 6 to 30 has to be worked out treating the services of the direct recruits from the date of their initial appointment and the services of the respondents promotees from the date of their service being approved by the Public Service Commission and notified by the State Government w.e.f. June 1988. The seniority list may accordingly be re-drawn up. There will be no order as to costs.

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Appeal allowed.