



IN THE GAUHATI HIGH COURT

(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

WRIT APPEAL No.75 OF 2023

1. Sri Rubul Sarmah,
Child Development Project Officer, Boko,
Bongaon ICDS Project, PO: Boko,
District: Kamrup (M).
2. Sri Bidyut Hazarika,
Child Development Project Officer,
Laharighat ICDS Project, PO: Laharighat,
District: Morigaon.
3. Jatish Baruah,
Child Development Project Officer,
Baginadi ICDS Project, PO: Baginadi,
District: Lakhimpur.
4. Uttam Adhikari,
Child Development Project Officer,
Kaliabor ICDS Project, PO: Kaliabor,
District: Nagaon.
5. Rubi Kalita,
Child Development Project Officer,
Tezpur Urban ICDS Project, PO: Tezpur,
District: Sonitpur.
6. Bholanath Pegu,
Child Development Project Officer,
Karbi Anglong ICDS Project, PO:
Singimari, District: Nagaon.
7. Dr. Syed Nasiur Rahman,
Child Development Project Officer,
Hajo ICDS Project, PO: Hajo, District:
Kamrup (R).

8. Jyoti Bikash Dutta,
Child Development Project Officer,
Kalipani ICDS Project, PO: Tiok,
District: Jorhat.

9. Dudu Dutta,
Child Development Project Officer,
Dimow ICDS Project, PO: Dimow,
District: Sivasagar.

.....Appellants

-Versus-

1. Simanta Pradip Choudhury,
Son of Late Amulya Choudhury,
Resident of Milan Nagar, Barpeta Road,
District: Barpeta, Assam, PIN - 781315.

2. Gunindra Talukdar,
Son of Late Radha Kanta Talukdar,
Resident of Gandhi Nagar, Ward No.16,
J.M. Path, Barpeta, PIN - 781301.

3. Anupam Das,
Son of Sri Apurba Kumar Das,
Resident of Village: Chandanpur,
Barpeta, Assam, PIN - 781315.

4. Santosh Kutum,
Son of Late C.R. Kutum,
Resident of Rukminigaon, Sadhani Path,
House No.36, Guwahati, Assam, PIN -
781022.

5. Bhupen Bhattacharjee,
Son of Sri Khanin Kumar Bhattacharjee,
Resident of House No.181, Hengrabari,
Guwahati, Kamrup, PIN - 781036.

6. Irani Thakuria
Son of Late C.K. Thakuria,
Resident of Nagaon, District: Barpeta,
PIN - 781370.

7. Jyoti Kumar Das,
Son of Late Ashwini Kumar Das,
Resident of Village: Brindaban Hati,
Ward No.9, Barpeta, PIN - 781301.

8. Brajendra Nath Das,
Son of Late Nareswar Das,
Resident of Village: Madhya Metuakuchi,
Sukhalata Choudhury Path, Ward No.18,
District: Barpeta, Assam, PIN - 781301.

9. Mainul Haque Choudhury,
Son of Late Dagumiah,
Resident of Village: Palhazi, Barpeta
Assam, PIN - 781309.

10. Monika Barthakur
Daughter of Sri Sarat Chandra Barthakur
Resident of B.G. Road, Amulapatty,
Itachali, PIN - 782003.

11. Sri Jitu Deka,
Son of Sri Girish Deka,
Resident of Hatigarh, Karbi Path,
Geeta Nagar, PIN - 781024.

12. Jayanta Kumar Das,
Son of
Resident of Amolapatty, Barpeta, Ward
No.5, Assam, PIN - 781301.

13. Jintu Moni Phukan,
Son of Sri Bipin Chandra Phukan,
Resident of Sivanagar, Bye Lane No.2,
Nagaon, PIN - 782003.

14. Kukheswar Borah,
Son of Puleswar Borah,
Resident of House No.46, Swadesh
Nagar, Khanapara, Kamrup, Guwahati -
781022.

15. Rudra Prasad Das,
Son of Late Hari Prasad Das,
Resident of Rajgarh Link Road,
Guwahati- 781005.

16. Sri Nileswar Roy,
Son of Late Praneswar Roy,
Resident of Natun Para, New
Bongaigaon, Shanti Nibas, PIN - 783380.

17. Brinchi Kumar Borah,
Son of Late Umakanta Borah,
Resident of Village: Nonoi Panigaon,
Nagaon, PIN - 782001.

18. Dhiraj Kumar Talukdar,
Son of Late Narayan Talukdar,
Resident of Village: Chapaguri, Barpeta,
PIN - 781318.

19. Bodiozzaman Ahmed,
Son of Late Abdul Kari,
Resident of Hatigaon, Sijubari,
Guwahati PIN - 781038.

.....Private Respondents

20. The State of Assam, repressed by
the Commissioner & Secretary to The
Government of Assam, Social Welfare
Department, Dispur, Guwahati - 781006.

21. The Principal Secretary to the
Government of Assam, Social Welfare
Department, Dispur, Guwahati - 781006.

22. The Additional Chief Secretary to the
Government of Assam, Social Welfare
Department, Dispur, Guwahati - 781006.

23. The Secretary to the Government of
Assam, Social Welfare Department,
Dispur, Guwahati - 781006.

24. The Deputy Secretary to the
Government of Assam, Social Welfare
Department, Dispur, Guwahati - 781006.

25. The Director, Social Welfare
Department, Uzanbazar, Guwahati -
781001.

26. The Assam Public Service
Commission, represented by its
Chairman, Jawaharnagar, Khanapara,
Guwahati – 781022.

.....Respondents

- B E F O R E -
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE SOUMITRA SAIKIA

For the Appellants : Mr. U.K. Nair, Senior Advocate.
assisted by Mr. S.P. Sharma, Advocate.
Ms. U. Sharma, Advocate.

For the Respondents : Mr. K.N. Choudhury, Senior Advocate,
assisted by Mr. R.M. Deka, Advocate
for respondent Nos.1 to 19.

: Mr. R.K. Borah, Additional Senior
Government Advocate, Assam for
respondent Nos.20 to 25.

: Mr. T.J. Mahanta, Senior Advocate,
assisted by Ms. P. Sarma, Advocate for
respondent No.26.

Date of Hearing : **02.03.2023.**

Date of Judgment & Order : **9th May, 2023.**

JUDGMENT & ORDER

[Soumitra Saikia, J.]

Heard Mr. U.K. Nair, learned senior counsel, assisted by Mr. S.P. Sharma, learned counsel for the appellants. Also heard Mr. K.N. Choudhury, learned senior counsel, assisted by Mr. R.M. Deka, learned counsel appearing for the respondents No.1 to 19; Mr. R.K. Borah, learned Additional Senior Government Advocate, Assam, appearing for the respondents No.20 to 25 and Mr. T.J. Mahanta, learned senior counsel, assisted by Ms. P. Sarma, learned counsel appearing for the respondent No.26.

2. This writ appeal is directed against the judgment & order dated 10.02.2023 passed by the learned Single

Judge in WP(C) No.8318/2019. The private respondents No.1 to 19 in the present writ appeal had filed the aforesaid writ petition praying for setting aside and quashing of the Provisional Gradation List published on 29.12.2017 as well as the Final Gradation List published on 01.10.2019 insofar as the seniority of the writ petitioners *vis-à-vis* the respondents were concerned. The writ petitioners, who are private respondents No.1 to 19 herein, also prayed for a direction to publish a fresh Gradation List by placing them above the respondents No.8 to 24 in the writ petition, some of whom are appellants before this Court.

3. The facts essential for the purposes of this appeal are that pursuant to an advertisement dated 19.08.1997 issued by the Assam Public Service Commission (hereinafter referred to as "APSC") for filling up of 27 numbers of vacant posts of Child Development Project Officer (CDPO), the appellants and the private respondents No.1 to 19 in the present appeal, participated in the said selection process. The private respondents No.1 to 19 were selected and their names appeared in the select list published on 17.07.2000. Pursuant to their selection, they were appointed as CDPOs in the year 2001 and they continued to work as CDPOs pursuant to their appointments. The appellants, who were working on *ad-hoc* basis as Regulation 3(f) appointees, however, failed to clear the selection and their names did not find place in the Select List published on 17.07.2000. The appellants

continued to work on *ad-hoc* basis till they were regularized subsequently by the Department. The dispute arose when the respondent Department published a Provisional Gradation List on 29.12.2017 wherein, the names of the private respondents No.1 to 19 were placed below that of the appellants in the present appeal.

4. Enquiries made thereafter revealed that the services of the appellants were regularized pursuant to a Cabinet decision taken by the Government on a proposal for relaxation of Clause 5(c) and Clause 11 of the Assam Social Welfare (Recruitment & Promotion) Service Order, 1994 (hereinafter referred to as "1994 Service Order"). The Cabinet decision was taken on 13.10.2000 on the proposal moved through a Cabinet Memorandum and subsequently a Notification dated 16.11.2000 was issued by the competent authority of the Government of Assam, Social Welfare Department, whereby the services of the appellants were regularized. Although objections were submitted by some of the private respondents towards the Provisional Seniority List published, the same were ignored and a Final Gradation List was published on 01.10.2019 in respect of Class-II Officers in the Social Welfare Department wherein, the names of the private respondents No.1 to 19 were placed below that of the appellants.

5. The learned Single Judge, upon consideration of the matter, interfered with the Provisional Gradation List as well as the Final Gradation List and further held that the writ petitioners (private respondents herein) were to be

treated as incumbents from the batch of APSC select list of 17.07.2000 and the respondents No.8 to 24 (appellants herein) were to be treated as incumbents whose services had been regularized with effect from 16.11.2000 by virtue of the Notification No.SWD.34/99/104 dated 16.11.2000, which was issued on the strength of the Cabinet decision dated 13.10.2000. The State respondents were, therefore, directed to prepare and publish a fresh Final Gradation List by placing the names of the petitioners No.1 to 19 above the names of the respondents No.8 to 24 within a period of 1(one) month from the date of service of a certified copy of the said judgment & order. The directions issued by the learned Single Judge are extracted herein below:-

“Reliefs to which the petitioners are found entitled to:

41. *The petitioners are found entitled to and are granted the following reliefs:-*

i. The provisional gradation list published vide notification nos.SWD.544/2017/11 dated 29.12.2017, is set aside in so far as it relates to the seniority position of the petitioners vis-à-vis the respondent nos.8 to 24.

ii. The final gradation/seniority list vide notification no.SWD.544/2017/477 dated 01.10.2019 is set aside, in so far as it relates to the seniority position of the petitioners vis-à-vis the respondent nos.8 to 24.

iii. For the purpose of Clause 10 of the Assam Social Welfare (Recruitment and Promotion) Service Order, 1994, the petitioners are liable to be treated as incumbents from the batch of APSC select list dated 17.07.2020. Similarly, the respondent nos.8 to 24, are entitled to be treated as incumbents whose service has been regularised with effect from 16.11.2000, the date when notification no.SWD.34/99/104 dated 16.11.2000 was issued on the strength of Cabinet decision dated 30.10.2000.

iv. The respondent nos.1 to 5 are directed to prepare and publish a fresh final gradation list by placing the names of the petitioner nos.1 to 19 above the names of the respondent nos.8 to 24 within a period of 1(one) month from the date of service of a certified copy of this order on the Commissioner and Secretary to the Government of Assam, Social Welfare Department and/or the Head of the Social Welfare Department, by whatever nomenclature such post is being held.”

6. Being aggrieved, the respondents No.8 to 24 in the writ petition have preferred this appeal as appellants on the following grounds:-

“6. GROUNDS ON WHICH THE CONCLUSION AND DECISION OF HON'BLE SINGLE JUDGE IS CHALLENGED-

a. For that learned Single failed to consider the matter in its true perspective in as much as the regularization of the services of the appellants/ respondents from November 2000 is concerned, the same has been upheld by the Apex Court in Mukul Saikia V State of Assam (Supra).

b. For that the learned Single failed to consider the law that seniority in service is considered from the date of joining of the service and not from the date a person is selected. In the instant case the petitioners /respondents were appointed in service in 2001 and 2002 whereas the appellants/respondents were appointed and regularised in November 2000.

C. For that the learned Single Judge failed to consider the fact that the petitioners/respondents were not even borne in the cadre when the appellants/ respondents were appointed and regularised and therefore giving seniority to the petitioners/ respondents is untenable in law.

d. For that the learned Single Judge's finding that the seniority is to be calculated on the basis of Clause 10 of the 1994 Service Order, and any other method of computation of seniority would frustrate the provisions of Clause 10 of the 1994 Service Order, is not legally tenable, as in the instant case by virtue of clause 11 of the 1994 service order, notification dated 16.11.2000 was issued by the State Government regularising the services of the appellants/

respondents from their dates of joining. And the said notification was upheld by the Supreme Court in Mukul Saikia v. State of Assam (Supra).

e. For that the learned Single Judge failed to interpret the correct proposition of laid down in Mukul Saikia v State of Assam (Supra).

f. For that learned Single Judge despite of holding that the Clause 11 of 1994 Service order was upheld by the Supreme Court in Mukul Saikia v State of Assam (supra), failed to apply the same in its conclusion.

g. For that learned Single has made a manifest error of law by holding that the seniority of the private respondent will be above the appellants/respondents due to Clause 10 of the 1994 Service Order. Whereas the correct interpretation of Clause 10 is that the seniority of a person will be accordance with which one's name appeared in the selection list provided he joins within 15 days, and thus joining the services is a sine qua non for claiming seniority. In the instant case, the appellants/respondents were not part of the same select list as that of the private respondents /petitioners. Therefore, combining the two different batch of employees would frustrate the purpose as laid down in 1994 Service Order.

h. For that the learned Single Judge ought to have taken into account all relevant documents exercising its writ-jurisdiction and, in this regard, relevant documents could have been called for, if was so recognized more particularly when the statements made in the counter affidavit were based on the relevant records.

i. For that the finding of the learned Single Judge that the names of the appellants/respondents having not appeared in APSC list, they cannot claim seniority over the petitioners/respondents is untenable in law as the appellants/respondents herein were regularised by a cabinet memorandum dated 16.02.2001 by invoking Clause 11 of the 1994 Service Order and the same has been upheld by the Apex Court in Mukul Saikia v State of Assam (supra).

j. For that the learned Single failed to consider the Apex Court Judgement K. Meghachandra Singh & Ors. V. Ningam Siro And Ors reported in (2020) 5 SCC 689 wherein it has been categorically held that the seniority is to be given from date of appointment and not from the date of initiation of recruitment process and for that matter when a person is borne

in the cadre only. In the instant case the learned Single Judge has held that the seniority needs to be given from the date selection, thus violating the law laid down in the aforesaid judgement.

k. For that the true state of affairs in the matter cannot be set at naught ignoring the relevant facts and law exercising the writ jurisdiction.

l. For that in any view of the matter the impugned judgment is not sustainable both on facts and law.

m. For that the learned Single Judge failed to take into consideration the Rule 17 of the Assam Rules of Executive Business relating to regularization of appellants/respondents who were initially appointed under Regulation 3(f) of the APSC Regulation, 1951, on need basis.

n. For that the learned Single Judge made manifest error of fact and law by not appreciating that the appellants/respondents and the private respondent belong to two different and distinct class and could not be equated towards denial of established seniority of the appellants/respondents/respondents.

o. For that the provisions of Clause 10 of the Assam Social Welfare (Recruitment and Promotion) Service Order, 1994, relates only to the intra-se seniority of the persons appointed from the select list dated 17.07.2000 and the learned Single Judge erred in applying the provisions of the said clause towards determining the inter-se seniority between the appellants/respondents and petitioners/respondents in as much as a concluded appointment existed in favour of the appellants/respondents w.e.f. 16th November, 2000, on which date the petitioners/respondents were not even borne in the cadre. It is settled law that mere placement in the select list gives no indefectible right to a person for appointment.”

7. Before this Court, the appellants urged that they were working under Regulation 3(f) of the APSC (Limitation of Functions) Regulation, 1951 (hereinafter referred to as the “1951 Regulation”) by virtue of the Cabinet decision dated 13.10.2000 and in pursuance whereof the Notification dated 16.11.2000 was issued by the competent authority in the Government of Assam regularizing the

services of the appellants in the posts of CDPO in which they were already working as Regulation 3(f) appointees. It is submitted that the appellants were appointed into the cadre of CDPOs at a much prior date than the private respondents/writ petitioners. Mr. U.K. Nair, learned senior counsel for the appellants contended that the appellants were regularized by relaxation of Clause 5(c) and Clause 11 of the 1994 Service Order by way of the Cabinet Memorandum. The private respondents/writ petitioners, on the other hand, were appointed on various dates in the year 2001. As such, their claim for seniority over the appellants will amount to giving retrospective effect even prior to the dates of appointments of the private respondents/writ petitioners and their entry into the cadre of CDPO.

8. Mr. Nair, learned senior counsel strenuously urged that the seniority in the cadre has to be determined after the person is inducted into the cadre. Such seniority cannot be determined or claimed prior to the date of appointment into the cadre. The claims of the private respondents that their names ought to have appeared above the appellants, if acceded to, will amount to granting them seniority from a date prior to their dates of appointment and entry into the cadre. It is submitted that the direction of the learned Single Judge that the private respondents were to be treated as incumbents from the batch of APSC select list of 17.07.2000 and thereby the direction that the private respondents were to be placed above the appellants, is

contrary to the basic tenets of service jurisprudence inasmuch as the private respondents were appointed in service on various dates only in the year 2001 whereas, the appellants were already in service by virtue of being appointed under Regulation 3(f) of the 1951 Regulation and were regularized with effect from 16.11.2000 in their respective posts. Therefore, admittedly the appellants were members of the cadre well prior to the dates of appointments of the private respondents. Therefore, the direction of the learned Single Judge allowing the writ petition and directing the respondent Department to place the private respondents No.1 to 19 above the appellants is erroneous and the same needs to be suitably interfered with and set aside.

9. Mr. Nair, learned senior counsel appearing for the appellants in support of his arguments has referred to the judgment of the Apex Court rendered in ***Mukul Saikia & Ors. -Vs- State of Assam & Ors.***, reported in ***(2009) 1 SCC 386***. The learned senior counsel submitted that the regularization of the appellants were put to challenge before this Court in an earlier round of litigation and the same had travelled to the Apex Court. The Apex Court vide judgment & order dated 18.11.2008 in ***Mukul Saikia*** (supra) dismissed the SLP and did not interfere with the regularization of the appellants. Referring to the judgment rendered in ***Mukul Saikia*** (supra), the learned senior counsel for the appellants urged that the Apex Court held that the appellants therein cannot maintain any claim

whatsoever in respect of the 18(eighteen) vacancies of CDPOs in which the private respondents, namely, the appellants herein, were regularized by way of the Cabinet Memorandum. The Apex Court held that the services of those CDPOs were regularized against the vacancies meant for promotees and the appellants and the private respondents therein being from two different and distinct sources, their relative rights cannot be compared with each other and, therefore, there cannot be any violation of fundamental rights under Article 14 of the Constitution of India as a consequence of the regularization of the services of the respondents, namely, the appellants herein. The effect of the judgment of the Apex Court is that the regularization of the appellants in this respective posts have not been interfered with and, therefore, their date of entry into the cadre of CDPOs were well prior to the dates of appointments of the private respondents No.1 to 19.

10. The learned senior counsel for the appellants submitted that in view of such specific findings by the Apex Court rendered in ***Mukul Saikia*** (supra), the direction of the learned Single Judge that the private respondents No.1 to 19 should be placed above the appellants with effect from the date of their names being published in the select list is contrary to the said judgment of the Apex Court and is, therefore, liable to be interfered with and set aside.

11. The learned senior counsel for the appellants also relied upon the judgment of the Apex Court rendered in ***K. Meghachandra Singh & Ors. -Vs- Ningam Siro & Ors.,***

reported in **(2020) 5 SCC 689** wherein, the Apex Court has held that as a general principle of law, a direct recruit cannot get backdated notional seniority earlier than his entry into the service. By this decision, the earlier judgment of the Apex Court rendered in ***Union of India & Ors. -Vs- N.R. Parmar & Ors.***, reported in **(2012) 13 SCC 340** was overruled. Relying on this judgment, learned senior counsel for the appellants contended that it is no longer *res integra* that a person cannot claim seniority in the cadre prior to his date of appointment. On the basis of the legal principle laid down by the Apex Court in this judgment, it was submitted that the direction of the learned Single Judge that the private respondents/writ petitioners, who had joined in their respective posts in the cadre of CDPO in the year 2001, were to be placed above the appellants, who were regularized in their services vide the order dated 17.07.2000, is contrary to the settled principles in service jurisprudence as well as to the judgments of the Apex Court, as referred. It is, therefore, submitted that the judgment of the learned Single Judge being contrary to the law laid down by the Apex Court needs interference and the same should, therefore, be set aside and the Provisional and Final Gradation List published by the States respondents should be upheld.

12. Per contra, Mr. K.N. Choudhury, learned senior counsel appearing for the private respondents No.1 to 19 urged that there is no infirmity in the judgment of the learned Single Judge inasmuch as it is not in dispute that

the regularization of the appellants does not have the concurrence of the APSC as is required under the Service Rules. The learned senior counsel further submitted that the appellants had also appeared in the selection process but failed to successfully clear the same and it is in order to circumvent the failure of the appellants to successfully clear the APSC selection that the Government at that relevant point in time brought out the Cabinet Memorandum dated 16.06.2000 and as a consequence thereof vide the Notification dated 16.11.2000, the services of the appellants were regularized. The learned senior counsel for the private respondents in support of his contentions relies upon the judgments of the Apex Court in ***State of U.P. -Vs- Rafiquddin & Ors.***, reported in **1987 (Supp) SCC 401** and ***A.K. Bhatnagar & Ors. -Vs- Union of India & Ors.***, reported in **(1991) 1 SCC 544**.

13. The learned counsels appearing for the parties have been heard. Pleadings before this Court as well as the judgment of the learned Single Judge have been carefully perused. The judgments cited at the Bar have also been carefully noted.

14. The service conditions of the CDPOs are governed by the 1994 Service Order. Under Clause 5(c), it is provided that the cadre of CDPO *inter alia* shall be filled up by direct recruitment through the Commission as per norms fixed jointly with the Ministry of Welfare, Government of India by the Social Welfare Department. Clause 10 of the 1994 Service Order which provides for

seniority, stipulates that the seniority of a member of the service in a cadre shall be according to the order in which one's name appeared in the selection list. It is not in dispute that the appellants were regularized in their services with effect from 16.11.2000 and their regularization in the post of CDPOs in which they were appointed earlier under Regulation 3(f) of the 1951 Regulation, have also not been interfered with by the Apex Court in ***Mukul Saikia*** (supra).

15. That being the position, there is no doubt that the appellants were regularized in the posts in which they were earlier appointed under Regulation 3(f) of the 1951 Regulation. But it is also not disputed by the appellants that they too had appeared in the selection process undertaken by the APSC together with the private respondents, but they could not successfully clear the said selection. A perusal of the judgment in ***Mukul Saikia*** (supra) also reveals that the regularization of the services of the appellants were in respect of vacancies which were reserved for the promotees and the appellants before the Apex Court being direct recruits, the Apex Court held that the appellants did not have any claim over the vacancies which arose from the quota meant for the promotees. Under such circumstances, the appointments/regularization of the present appellants made by virtue of the Notification dated 16.11.2000 were not interfered with.

16. Having said that, the judgment of the Apex Court in ***Mukul Saikia*** (supra) also did not delve into the

question regarding the validity of the Gradation List in respect of the *inter se* seniority of CDPOs in terms of the 1994 Service Order. The issue before the Apex Court in **Mukul Saikia** (supra) was the legality of the regularization of the respondents therein in the advertised posts of CDPO by way of Notification dated 16.11.2000 issued in pursuance to the Cabinet decision taken on 13.10.2000. Clause 10 of the 1994 Service Order prescribes that the seniority list shall be on the basis of the names as they appeared in the selection list. There is no dispute at the Bar that the private respondents No.1 to 19 as well as the appellants had appeared for the same selection process conducted by the APSC. However, it is only the private respondents No.1 to 19 whose names had appeared in the select list. The appellants had failed to successfully clear the same, although they continued to work as Regulation 3(f) appointees.

17. A perusal of the 1994 Service Order reveals that except Clause 10, there is no other provision which prescribes as to how the seniority list is to be prepared. The Apex Court in the judgment of **Mukul Saikia** (supra) had also recorded that the Cabinet Memorandum adopted pursuant to which the appellants were appointed was taken under peculiar circumstances. It is also not in dispute that there is no other Office Memorandum or Notification amending or modifying the relevant Clause which lays down the criteria for determination of *inter se* seniority. The fact remains that the private respondents/writ

petitioners had appeared in the selection process conducted by the APSC and were duly considered successful in the same. The said selection process conducted by the APSC is the mode prescribed under the 1994 Service Order. Such position is not disputed by the learned counsels appearing for the appellants. On the other hand, it is also not in dispute that the appointments by way of regularization of the services of the appellants although put to challenge before this Court at an earlier proceedings, which culminated in an appeal before the Apex Court, i.e. **Mukul Saikia** (supra), were not interfered with by the Apex Court.

18. Mr. U.K. Nair, learned senior counsel for the appellants attempted to persuade this Court that the Apex Court in **Mukul Saikia** (supra) had upheld the regularization and therefore, the appellants having been regularized in service with effect from 16.11.2000 are required to be placed above the respondents who were appointed on various dates only in the year 2001.

19. We are unable to agree with the submissions so made by Mr. Nair, learned senior counsel for the appellants. In **Mukul Saikia** (supra), certain candidates, who were not appointed in the 27 vacancies although they had appeared in the selection process, had questioned the regularization of the services of the present appellants vide Notification dated 16.11.2000. The Apex Court turned down the challenge as the posts advertised were 27 in number and all the 27 vacancies were filled up by duly

selected candidates and, therefore, the Apex Court held that there cannot be any right of the appellants therein to claim for appointment over and above the advertised posts. That apart, their further claim for being appointed in the vacancies in which the present appellants were regularized, was also turned down in view of the statements/submissions made on behalf of the present appellants who were respondents in **Mukul Saikia** (supra) that they were initially appointed under Regulation 3(f) and thereafter they were regularized in the quota earmarked for the promotees. The Apex Court held that the appellants in **Mukul Saikia** (supra) were the candidates who had submitted to the selection procedure meant for the direct recruits and, therefore, cannot have any claim in respect of the quotas meant for the promotees. It is in that context, the judgment in **Mukul Saikia** (supra) was rendered.

20. In the present proceeding, it is not in dispute that the appellants had appeared in the selection process but were unsuccessful. The Government at the relevant point in time, by way of a Cabinet decision resolved to regularize the services of the appellants and subsequently by a Notification dated 16.11.2000, the services of the appellants were regularized. Although the issue regarding the manner of selection is not before us, but the fact remains that the process adopted in favour of the appellants for regularization of their services is not prescribed under the Service Rules.

21. Clause 10 of the 1994 Service Order prescribes that the seniority of a member of the service in a cadre shall be according to the order in which one's name appeared in the selection list. If one joins the appointment within 15(fifteen) days from the date of receipt of the order or within the extended period which shall not in all, exceed 3(three) months. It is not the case of the appellants that their names had also figured in the select list. No amendment in respect of Clause 10 of the 1994 Service Order has been brought to our notice by the appellants in support of their contention that the seniority shall be counted from the date a person becomes a member of the cadre. The Cabinet decision dated 13.10.2000 and the Notification dated 16.11.2000 by which the services of the appellants were regularized also is not a part of the pleadings nor has it been subsequently placed before us. It is also not the case of the appellants that there was a specific provision in the Cabinet decision dated 13.10.2000 and/or the Notification dated 16.11.2000 to come to the aid of the appellants that their seniority will be counted from the date of their entry into the service on *ad-hoc* or from the date of their regularization. No such notification or Cabinet decision has been placed before us or before the learned Single Judge.

22. In ***K. Meghachandra Singh*** (supra), the Apex Court overruled the earlier judgment of ***N.R. Parmar*** (supra). The Apex Court held that the earlier judgment of ***N.R. Parmar*** (supra) was rendered in the context of

2(two) Central Government Office Memorandums and, therefore, the said principle which was subsequently adopted by the State Government of Manipur, notwithstanding the prescription of Service Rules was held to be not applicable by the Apex Court in **K. Meghachandra Singh** (supra).

23. A perusal of the said judgment reveals that the issue therein related to seniority under the Manipur Police Service Rules, 1965. Rule 28(i) of the said Rules prescribes that the seniority in the service of persons appointed under Rule 5(1)(b) should be determined by the order in which appointments are made to the service. Rule 28(iii) provides that relative seniority between direct recruits and promotees should be determined according to rotation of vacancies between direct recruits and promotees as determined under Rule 5 for that year and the additional direct recruits selected against the carried forward vacancies of the previous year would be placed en bloc below the last promotees (or direct recruits, as the case may be). It is further provided under the said Rules that seniority of persons under Rule 16(iii) should be counted from the date he/she is appointed to the service.

24. The facts involved in **K. Meghachandra Singh** (supra) are completely different from the facts and circumstances of the present case. Rule 16(iii) provides that in case a person is appointed to a post, which is subsequently declared as a duty post, he shall be deemed to have been appointed to the service from the date of

encadrement of the post in the Manipur Police Service Scheduled. It was in the context of the peculiar facts of **K. Meghachandra Singh** (supra) and the interpretation of the Service Rules that the Apex Court held that a person cannot claim seniority prior to their entry into the service. Even under Rule 28(i) of the Manipur Police Service Rules, the seniority in service of a person appointed on the result of competitive examination or by selection under Clause (b) of Sub-Rule (1) of Rule 5 shall be determined by the order in which appointments are made in the service. This Rule had not been declared to be invalid even in the facts of the case of **K. Meghachandra Singh** (supra).

25. Having examined the various judgments cited at the Bar, it is seen that the consistent view of the Apex Court is that *interse* seniority of the candidates is to be decided as per the provisions of the Service Rules. Ordinarily, it is in the order of merit as declared during the Selection process adopted. Where Rules prescribe a particular mode of selection and that the seniority is to be determined in the order in which the names appeared in the select list, the seniority will have to be determined in that manner, unless the Government takes a conscious decision to depart from the Rules and that too by an express order. The prescriptions under the Service Rules are rigorously required to be followed. Any departure from the prescription of the Rules will have to be on the basis of specific legislative orders that may have been passed by the competent authority. Such is not the case in the

present proceedings. In view of the facts of the present proceedings, the contentions raised by the appellants by placing reliance on **K. Meghachandra Singh** (supra) that seniority cannot be counted from the date prior to entry into the cadre, has to be read and understood in the facts and circumstances of the case before the Apex Court in **K. Meghachandra Singh** (supra). The principle laid down by the Apex Court in **K. Meghachandra Singh** (supra) that seniority has to be counted from the date of entry into service is not applicable in the facts and circumstances of the present proceedings, in view of the prescription under the 1994 Service Order, more particularly, Clause 10 thereof. The 1994 Service Order and Clause 10 thereof were not put to challenge before this Court. In view of the discussions made above, the judgment of the Apex Court rendered in **K. Meghachandra Singh** (supra), which has been pressed into service by the appellants, is not applicable in the facts and circumstances of the present case.

26. Having examined the judgments relied upon by the appellants, it will be apposite now to examine the judgments relied upon by the learned senior counsel for the private respondents No.1 to 19.

27. In **Rafiquddin** (supra), the question before the Apex Court was the determination of seniority on the basis of the year of appointment under Section 22 of the U.P. Civil Service (Judicial Branch) Rules, 1951. The Apex Court

held that only candidates who are approved by the Public Service Commission on the basis of marks in the written and *viva-voce* tests held can make such a claim. Some unplaced candidates of an earlier competitive examination cannot claim seniority, even after lowering of the requisite minimum marks, over the candidates who were regularly selected in terms of the Service Rules. The Apex Court held that they belonged to a different stream and cannot claim seniority over the candidates duly selected through the said examinations. The Apex Court further held that the unplaced candidates were appointed to the service in breach of the Rules and they formed a separate class.

28. In ***A.K. Bhatnagar*** (supra), it was held by the Apex Court that law is clear that seniority is an incidence of service and where the Service Rules prescribe the method of its computation, it is to be strictly governed by such Rules. The issue before the Supreme Court in this matter was the *inter se* seniority between the regularly recruited candidates and the *ad-hoc* appointees, who were regularized subsequently. The candidates, who were initially on *ad-hoc* service and were regularized subsequently, were placed below the regularly recruited candidates, who were recruited through the procedure prescribed under the Service Rules. The Apex Court upheld the step taken by the Union Government, whereby regularized candidates were placed below the regularly selected candidates/recruits.

29. Considering the entire matter and in view of the fact that the appointments of the private respondents No.1 to 19 were conducted through the process prescribed under the 1994 Service Order, it must be held that they were regularly appointed as per the procedure prescribed under the 1994 Service Order/Regulations. The appellants, on the other hand, were regularized in their services as a special case, which is recorded in the judgment by the Apex Court in **Mukul Saikia** (supra). While regularization of the appellants cannot be questioned in view of the decision rendered in **Mukul Saikia** (supra), the fact remains that the 1994 Service Order was not under consideration in **Mukul Saikia** (supra) as it stands today. Clause 10 of the 1994 Service Order categorically lays down the procedure that seniority is to be based on the names as they appeared in the selection list.

30. Taking all circumstances into consideration, we find that the learned Single Judge has correctly come to the conclusion that the private respondents/writ petitioners are to be placed above the appellants and consequently was justified in having interfered with the Provisional as well as Final Gradation List. In view of the discussions made above, we hold that the conclusions and the findings of the learned Single Judge in the impugned judgment are just and proper in the facts and circumstances of the case. We find no reason to take a different view and/or interfere with the findings so arrived by the learned Single Judge. We uphold the findings recorded by the learned Single

Judge in the impugned judgment & order dated 10.02.2023 passed in WP(C) No.8318/2019.

31. The writ appeal is devoid of merit and the same is accordingly dismissed. No order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant