

High Court of Judicature at Allahabad
(Lucknow)

Neutral Citation No.-2024:AHC-LKO:85024-DB

Reserved on: 23.09.2024

Delivered on: 18.12.2024

Court No. - 2

Case :- SPECIAL APPEAL No. - 301 of 2018

Appellant :- Adarsh Kumar Srivastav And 25 Ors.

Respondent :- State Of U.P. Thru Prin.Secy.Irrigation
Deptt.Lko.And 73 Ors.

Counsel for Appellant :- Paramanand Asthana,Ajeet
Kumar,Virendra Kumar Dubey

Counsel for Respondent :- C.S.C.,Ashok Shukla,Sameer
Kalia,Vidhu Bhushan Kalia

WITH

Case :- SPECIAL APPEAL No. - 270 of 2018

Appellant :- Vimal Kumar Pherwani And Another

Respondent :- State Of U.P.Through Prin.Secy.Irrigation
Deptt.Lko.And Ors.

Counsel for Appellant :- Gaurav Mehrotra,Parmanand
Asthana,Tushar Mittal

Counsel for Respondent :- C.S.C.,Ashok Shukla,Sameer
Kalia,Vidhu Bhushan Kalia

Hon'ble Rajan Roy,J.

Hon'ble Om Prakash Shukla,J.

(Per: Rajan Roy, J.)

(1) Heard Sri O.P. Srivastava, learned Senior Advocate for the appellant in Special Appeal No. 301 of 2018, Sri Gaurav Mehrotra, leaned counsel for appellant no. 2 in Special Appeal

No. 270 of 2018, Mr. J.N. Mathur, learned Senior Advocate assisted by Mr. Vidhu Bhushan Kalia, learned counsel for the private respondents, Mr. R.K. Upadhyay, learned counsel for the U.P. Public Service Commission and Mr. Vikrant Raghuvanshi, learned standing counsel for the State.

(2) By means of these appeals under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952, challenge has been made to the common judgment and order dated 22.05.2018 passed in Writ Petition No.72 (S/S) of 2017 [Sudhakar Tiwari & Ors. vs. State of U.P. & Ors.] and connected matters being Writ Petition No.599 (S/S) of 2017 and Writ Petition No.12840 (S/S) of 2017. The appellants before us were petitioners in Writ Petition No.12840 (S/S) of 2017 and Writ Petition No.599 (S/S) of 2017 . Some of the petitioners of Writ Petition No.599 (S/S) of 2017 have not challenged the judgment, therefore, the appellants-petitioners have arrayed them as proforma respondents in the appeal.

(3) The facts of the case in brief are that the appellants herein are diploma holders while the contesting respondents are degree holders. An Advertisement dated 02.12.2000 was issued for filling 954 posts of Junior Engineer (Civil) in Irrigation Department. Writ Petition No.1012 (S/S) of 2001 and Writ Petition No.7062 (S/S) of 2001 [Pramod Kumar Gupta vs. Public Service Commission U.P. & Ors] were filed by degree holders inter alia challenging the aforesaid advertisement dated 02.12.2000 and an interim order was passed on 18.12.2001. The said order dated 18.12.2001 read as under:-

"Heard the learned counsel for the petitioner, Sri R.K. Srivastava, learned, counsel appearing for respondent no.1

Public Service Commission and Sri A.K. Sinha, learned-Standing Counsel.

The grievance of the petitioners is that they being B. Tech degree holders applied for the posts of Junior Engineer (Civil) in the Irrigation Department. The minimum qualification for the said posts, according to advertisement, is Diploma in Engineering and since they are degree holders, their applications were not entertained.

Issue notice to the respondents. Since the respondents have accepted notice, therefore, no further notice need go.

Counter affidavit may be filed within four weeks and rejoinder affidavit with one week thereafter.

List this case on 13 February, 2002.

It is made clear that the case may be disposed of at the stage of admission, it is submitted at the Bar that many applicants like the petitioners have been denied of opportunity to appear in the written examination because of higher qualification is interim measure. I would have allowed all of them to appear in the examination but since the examinations fixed to 22nd December, 2001 and intimation could not be sent to them due to paucity of time. I feel that for ends of justice, entire examination should be stayed. Accordingly, it is so ordered.

Copy of this order be given to the counsel for the. respective parties within twenty four hours."

(4) The U.P. Public Service Commission challenged the said interim order dated 18.12.2001 by means of Special Appeal bearing No.485 of 2001 [UPPSC vs. State of U.P.] and on 19.12.2001, an interim order was passed in the said appeal which read as under:-

"Admit.

Issue Notice and connect with Special Appeal No. 486 of 2001.

Notice on behalf of Respondent No. 1 has been accepted by the learned chief Standing Counsel.

Sri T.N. Singh Advocate has accepted Notice on behalf of Respondents 2 to 5, who is the Counsel for the said Petitioners in the Writ Petition.

Ms Deepshikha, learned Standing. Counsel and the Counsel for the Respondents 2 of 5 Pray for and are granted three weeks to file Counter Affidavit, after service of its duplicates on the

Counsel for the Appellant, who may, if the so desires, file Rejoinder Affidavits within the next one week.

List alongwith the record of Writ petition for final disposal/final hearing on 22.01.2002.

We have heard learned Counsel for the Parties on the Application for Interim Relief.

Having regard to the peculiar facts and circumstances of this case and the submissions made by the learned Counsel for the Parties, we direct that notwithstanding the impugned Order dated 18-12-2001 passed by the learned Single judge, the Public Service Commission, U.P. to permit those candidates whose applications have been rejected solely on the ground that they possess a degree of Bachelor of Technology or Bachelor of Engineering conferred by a recognized University established by law in the examination conducted by the Commission for recruitment of Junior Engineer (Civil) in the Irrigation Department. The Appellant is directed to duly publicise the liberty granted by the Court to the candidates who possess the degree of B. Tech/B/E/ and whose applications have been rejected are permitted to appear in the aforesaid examination scheduled on 22.12.2001 at various places at lucknow and Allahabad at the specified venues. We further direct that the results of those candidates who have been permitted to appear in the examinations on 22.12.2001 and possess B.tech./B/E/ degree shall not be declared till further orders of the Court and it is expected that in the ever it it is necessary to declare the result of other candidates, the same shall necessarily abide by further orders of the Court and the declaration of results shall only be provisional and not final."

(5) As would be evident from the said interim order, degree holder engineers were permitted to appear in the selection for the post of Junior Engineer (Civil) but the Commission was restrained from declaring their result till further orders, however, with the stipulation that in case it is necessary to declare the result of other candidates i.e. those other than the degree holder engineers, the same shall necessarily abide by further orders of the Court and the declaration of results shall only be provisional and not final, meaning thereby, the

Commission in its wisdom could have declared the results of diploma holders etc but not of the degree holder candidates. However, the Commission presumably in order to avoid any complications and further litigation did not declare the results. The appellants here nor the proforma respondents were parties in the aforesaid proceedings whether it be before learned Single Judge or before the Division Bench in appeal. The written examination was, accordingly, held on 22.12.2001 and 23.12.2001 but the results were not declared. The appellants did not move any application or file any writ petition seeking declaration of result of written examination in pursuance to the advertisement dated 02.12.2000. Consequently, the result was not declared and the recruitment process initiated vide Advertisement dated 02.12.2000 remained stalled.

(6) In the meantime, on 31.12.2002, 361 other posts were advertised for a special selection/ recruitment for Scheduled Caste/ Scheduled Tribe candidates against backlog vacancies. Contesting private respondents applied in pursuance thereof. Written examination in pursuance to this Advertisement dated 31.12.2002 was held on 22.05.2003 and 23.05.2003. Result of the written examination was declared on 28.08.2004. Based thereon, interview was held in October, 2004 and the final result of the selection held in pursuance to the aforesaid advertisement dated 31.12.2002 was declared on 21.10.2004. The Commission issued final list of selected candidates and sent it to the State Government on 08.12.2004. Letters of appointment including the appointment of contesting respondents herein were issued on 02.03.2005.

(7) In nutshell, the contesting respondents were selected and appointed in pursuance to Advertisement dated 31.12.2002 on 02.03.2005, although, their advertisement had been issued subsequent to the advertisement in pursuance to which the appellants herein had applied which was dated 02.12.2000. Selection of the appellants could not take place on account of the interim orders already referred hereinabove and decision of the Commission not to declare the result of written examination.

(8) At no point of time did the appellants or proforma respondent approach the Court for declaration of result of their written examination and completion of their recruitment process i.e. of non-degree holders, during pendency of the writ petitions / appeals referred hereinabove.

(9) Ultimately, that is, after issuance of appointment letters of the contesting respondents, both the writ petitions filed by the degree holders as referred hereinabove were dismissed on 05.07.2005 and on that very date, result of the written examination held in pursuance to the Advertisement dated 02.12.2000 was declared by the Commission. Based thereon, interviews were held on 05.11.2005 to 12.01.2006. The final result was declared on 25.04.2006. Letters of appointment based on the selection held in pursuance to the Advertisement dated 02.12.2000 were issued to the appellants and proforma respondents from 10.06.2006 onwards.

(10) Evidently, orders of appointment were issued to the appellants herein subsequent to the orders of appointment of contesting respondents though the advertisement of the

appellants was issued earlier in point of time for the obvious reason as the selection of the appellants was held subsequently.

(11) A tentative seniority list of Junior Engineer (Civil) was issued in Irrigation Department on 20.04.2006 to which no objections were filed by the appellants herein as it did not contain the names of the appellants though contesting respondents found place in it. Likewise, tentative seniority lists were issued on 05.12.2008, 09.09.2010, 07.04.2014, 10.02.2015 and 30.03.2015 but none of them were finalized. The name of the appellants herein figured in the tentative seniority list for the first time on 05.12.2008 and tentative seniority list issued thereafter but no objections were filed by them. However, this is not very relevant though a plea has been taken by contesting respondents that ultimately the writ petitions challenging the seniority list was highly belated but the reason this aspect is not very relevant is that another tentative seniority list was issued on 22.04.2015 which was also not finalized. Ultimately, on 27.04.2016, a tentative seniority list was issued against which objections were filed by the appellants at least by some of them. The said objections were rejected on 10.06.2016. By a separate order, the final seniority list dated 10.06.2016 was issued, meaning thereby, two orders were passed, one by which the objections of the appellants were rejected and the other by which the final seniority list was issued. It is this final seniority list which was challenged by the appellants before us in the writ petitions filed by them.

(12) The relief clause of Writ Petition No.12840 (S/S) of 2017 [Vimal Kumar Pherwani & anr. vs. State of U.P. & Ors.] reads as under:-

"(i) To issue a writ, order or direction in the nature of certiorari quashing the impugned seniority list dated 10.06.2016, issued by the Opp-party no. 2 (contained in Annexure No.1 to the writ petition).

(ii) To issue a writ, order or direction in the nature of mandamus commanding the Opp-parties to assign the seniority to the petitioners over and above the candidates selected and appointed, as Junior Engineers (Civil) pursuant to Advertisement No. A-3/E-1/2002.

(iii) To issue a writ order or direction in the nature of mandamus directing the Opp-party no. 3 not to make any promotion on the post of Assistant Engineer (Civil) on the basis of impugned seniority list dated 10.06.2016.

(iv) To issue a writ order or direction in the nature of mandamus directing the Opp-party no. 2 to specify 22.12.2000 as the date of substantive appointment of the petitioners.

(v) To award the cost of this petition in favour of the petitioners.

(vi) To issue any other writ, order or direction which this Hon'ble Court deems fit and proper in the circumstances of the case."

(13) The relief clause of Writ Petition No.599 (S/S) of 2017 [Adarsh Kumar Srivastava & ors vs. State of U.P. & Ors.] reads as under:-

"[a] To issue a writ, order or direction in the nature of certiorari quashing the impugned seniority list dated 10.06.2016 issued by the Opp-party no. 2, the true copy of which is contained as Annexure-1 to this writ petition.

[b] To issue a writ, order or direction in the nature of mandamus commanding the Opp-parties to assign the seniority to the petitioners over and above the candidates selected and appointed as Junior Engineers (Civil) pursuant to Advertisement No. A-3/E-1/2002.

[c] To issue a writ, order or direction in the nature of mandamus directing the Opp-party no. 3 not to make any

promotion on the post of Assistant Engineer (Civil) on the basis of impugned seniority list dated 10.06.2016.

[d] To award the cost of this petition in favour of the petitioner.

(e) To issue any other writ, order or direction which this Hon'ble Court deems fit and proper in the circumstances of the case."

(14) Essentially, challenge was raised by the appellants to the placement of the contesting respondents above them in the final seniority list dated 10.06.2016, however, the order dated 10.06.2016 rejecting their objections was not specifically challenged. Nevertheless, it can be assumed that the said challenge was implicit in the challenge to the final seniority list issued on its basis. In Writ Petition No.12840 (S/S) of 2017, relief no.(iv) was in the nature of mandamus directing the concerned opposite parties to specify 22.12.2000 as the date of substantive appointment of the petitioners (appellants). We do not find any relevance of this date i.e. 22.12.2000. It is quite possible that it is a typographical error and the substantive appointment being sought was from 02.12.2000 which was the date of advertisement otherwise the aforesaid date has no relevance to the issues involved herein. We are not aware of any law which permits a retrospective appointment from the date of advertisement. Therefore, not much effort is required to hold that relief no.(iv) in the writ petition was absolutely misconceived.

(15) As far as challenge to seniority is concerned, as the writ petitions were filed in the year 2017 within a reasonable period of final seniority list dated 10.06.2016 having been issued,

therefore, the plea of delay raised by the contesting respondents cannot be accepted.

(16) We, now, come to the merits of the issues involved. Now, the writ petitions of the appellants have been dismissed with reference to relevant rules of seniority i.e. U.P. Government Servant Service Rules, 1991 which in fact do not envisage a situation such as the one which had occurred where the selection of the appellants got delayed for the reasons already discussed resulting in delayed appointment and in the interregnum the contesting respondents got selected based on a subsequent advertisement and their orders of appointment were also issued prior to that of the appellants. Therefore, learned Single Judge apart from considering the rule position sought guidance from various decisions of Hon'ble the Supreme Court reported in (2011) 3 SCC 267 '**Pawan Pratap Singh & Anr. vs. Reewan Singh and Ors.**' to hold that any retrospectivity in grant of seniority or in the date of appointment can only be given when it is provided for in the service rules. According to learned Single Judge, in the present case there was no service rule which provided for seniority or date of appointment to relate back to any period prior to the incumbent's birth in service/cadre. So far as applicability of Rule 5 and its proviso to the Rules of 1991 is concerned, Hon'ble the Supreme Court in **Pawan Pratap Singh (supra)** found that the same was not applicable. Accordingly, learned Single Judge opined that since in the present case there is no such rule, carving out an exception to the general rule of date of appointment being relevant date for fixing seniority, as held by the Supreme Court in **Pawan Pratap Singh (supra)** case, it was not possible to

accept the submissions of the learned counsels for petitioner (appellants). He has also noticed that judgment in the case of **Pawan Pratap Singh (supra)** had been followed by the Supreme Court in subsequent decisions reported in (2017) 13 SCC 575; '**Union Of India Vs. N.C. Murali**'; (2014) 14 SCC 720 '**State of U.P. Vs. Ashok Kumar Srivastava**'; (2012) 13 SCC 340 '**Union of India Vs. N.R. Parmar**'; (2013) 8 SCC 693 '**P. Sudhakar Rao Vs. U. Govinda Rao and Ors.(350)**'. Learned Single Judge repelled the reliance placed by learned counsel for the appellant on the decision of Hon'ble the Supreme Court reported in (1990) 2 SCC 669 '**A.P. Public Service Commission Hyderabad & Anr. vs. B. Sarat Chandra & Ors.**'; (2008) 7 SCC 728 '**Balwant Singh Narwal & Ors. vs. State of Haryana & Ors.**'; (1982) 2 SCC Page 7 '**V.T. Khanzode and Ors. vs. Reserve Bank of India & Anr.**' and (2016) SCC Online Delhi 2962 '**Union of India and Ors. vs. Sandip Kumar Roy & Ors.**' on the ground that the fact situation in the said cases was different.

(17) Now, the contention of Sri O.P. Srivastava, learned counsel for the appellants in Writ Petition No.301 (S/S) of 2018 was that issuance of Advertisement dated 31.12.2002 for filling up backlog vacancies was bad on facts and in law as for the vacancies to be backlog they must have been advertised earlier and remained unfilled, which was not the case, therefore, any selection and appointment made in pursuance to the Advertisement dated 31.12.2002 was de hors the law as such no benefit of seniority could accrue to such appointees i.e. the contesting respondents. He has relied upon the decisions of Hon'ble the Supreme Court reported in 2023 AIR (SC) 5491 '**Mumtaz Yarud Dowla Wakf vs. Badam Balakrishna Hotel Pvt.**

Ltd. & Ors.'; AIR 2013 SC 234 'Bhupendra Nath Hazarika & Ors. vs. State of Assam & Ors.'; 1991 AIR (SC) 284 'Keshav Chandra Joshi vs. Union of India'; (2011) 1 SLR 263 'State of U.P. & Ors. vs. Sangam Nath Pandey & Ors.'; (2012) 13 SCC 340 'Union of India & Ors. vs. N.R. Parmar & Ors' and decision of Allahabad High Court reported in 2016 (1) ADJ 391 **'Suresh Kumar & Ors. vs. State of U.P. & Anr'** in support of his contention.

(18) However, we asked Sri Srivastava to kindly take us through the pleadings before the writ court as also the relief clause wherein such a case may have been set up before the learned Single Judge or for that matter through the objections which may have been filed by his clients to the tentative seniority list wherein such an objection may have been raised but Sri Srivastava could not show any such objection or relief clause in any of these documents. We cannot permit a new case being set up by the appellants at the appellate stage after their writ petitions have already been dismissed that too at the time of hearing. There is no such ground taken in either of the two appeals before us apart from the fact that it would be impermissible to do so at this stage.

(19) As far as Sri Gaurav Mehrotra, learned counsel appearing for the appellants in the other appeal is concerned, he relied upon decisions reported in (2014) 10 SCC 357 **'Asis Kumar Samanta vs. State of U.P.'; (2008) 7 SCC 728 'Balwant Singh Narwal vs. State of Haryana & Ors.'; (1997) 1 SCC 111 'Dr. A.R. Sircar vs. State of U.P.'; (1990) 2 SCC 669 'A.P. Public Service Commission Hyderabad and Anr. vs. Sarat Chandra & Ors.'** and (2011) 3 SCC 267 **'Pawan Pratap Singh & Ors. vs. Reevan Singh**

& Ors.' to submit that the advertisement of the appellants being earlier in point of time and the selection having got delayed for no fault of his clients, they cannot be made to suffer, as such, equity demanded, especially in view of the aforesaid decisions that they be placed above those whose selection process was initiated subsequent to the advertisement of the appellants.

(20) The contesting respondents have submitted that appellants cannot be given seniority from a date prior to the date of their appointment order when they were not even born in the cadre of service.

(21) We have perused the U.P. Government Servants Seniority Rules, 1991 (hereinafter referred to as 'the Rules, 1991'). Rule 5 thereof applies where appointments are made by direct recruitment only. This rule would apply where there is a dispute of seniority between the candidates selected on the basis of one selection which is not the case here. Here, two separate advertisements for direct recruitment were issued on different points of time and two separate selections were held, therefore, Rule 5 has no application. Second proviso to Rule 5 does not apply as Rule 5 itself does not apply for the reason that the post of Junior Engineer (Civil) is to be filled by direct recruitment as well as by promotion. Reliance placed by Sri Mehrotra, learned counsel for the appellants in connected appeal on an Explanation to Rule 5 is therefore irrelevant. Explanation to second proviso of Rule 5 also does not apply for the same reason as the Rule itself does not apply.

(22) Rule 8 applies for determining seniority where appointments are made by promotion and direct recruitment both which reads as under:-

"8. Seniority where appointments by promotion and direct recruitment.- (1) Where according to the service rules appointments are made both by promotion and by direct recruitment, the seniority of persons appointed shall, subject to the provisions of the following sub-rules, be determined from the date of the order of their substantive appointments, and if two or more persons are appointed together, in the order in which their names are arranged in the appointment order:

Provided that if the appointment order specifies a particular back date, with effect from which a person is substantively appointed, that date will be deemed to be the date of order of substantive appointment and, in other cases, it will mean of issuance of the order :

Provided further that a candidate recruited directly may lose his seniority, if he fails to join without valid reasons, when vacancy is offered to him the decision of the appointing authority as to the validity of reasons, shall be final.

(2) The seniority inter se of persons appointed on the result of any one selection,-

(a) through direct recruitment, shall be the same as it is shown in the merit list prepared by the Commission or by the Committee, as the case may be;

(b) by promotion, shall be as determined in accordance with the principles laid down in Rule 6 or Rule 7, as the case may be, according as the promotion are to be made from a single feeding cadre or several feeding cadres.

(3) Where appointments are made both by promotion and direct recruitment on the result of any one selection the seniority of promotees vis-a-vis direct recruits shall be determined in a cyclic order (the first being a promotee) so far as may be, in accordance with the quota prescribed for the two sources.

Provided that-

(i) where appointment from any source are made in excess of the prescribed quota, the persons appointed in excess of quota shall be pushed down, for seniority, to subsequent year or years in which there are vacancies in accordance with the quota;

(ii) where appointments from any source fall short of the prescribed quota and appointment against such unfilled vacancies are made in subsequent year or years, the persons so

appointed shall not get seniority of any earlier year but shall get the seniority of the year in which their appointments, are made, so however, that their names shall be placed at the top followed by the names, in the cyclic order of the other appointees;

(iii) where, in accordance with the service rules the unfilled vacancies from any source could, in the circumstances mentioned in the relevant service rules be filled from the other source and appointment in excess of quota are so made, the persons so appointed shall get the seniority of that very year as if they are appointed against the vacancies of their quota."

(23) Sub-rule (1) of Rule 8 categorically prescribes that where according to the service rules appointments are made both by promotion and by direct recruitment, the seniority of persons appointed shall, subject to the provisions of the succeeding sub-rules, be determined from the date of the order of their substantive appointments, and if two or more persons are appointed together, in the order in which their names are arranged in the appointment order; provided that if the appointment order specifies a particular back date, with effect from which a person is substantively appointed, that date will be deemed to be the date of order of substantive appointment and, in other cases, it will mean date of issuance of the order. Great emphasis was laid by Sri Mehrotra on this proviso to Sub-rule (1) of Rule 8 to contend that the rules permits ante-dated appointment, therefore, the finding of learned Single Judge that there is no such rule for backdating the appointment is incorrect. However, on being asked to show from the appointment orders of the appellants the ante-dating or backdating of their appointments, learned counsel fairly submitted that the appointment orders did not contain any back date which may be referable to first proviso to Rule-8(1).

Therefore, even if the observation of learned Single Judge in this regard is contrary to the rule position, the fact is that there is no backdate mentioned in the appointment orders of the appellants. Second proviso to Rule 8(1) is not very relevant. Sub-rule (2) of Rule 8 deals with seniority inter se of persons appointed on the result of any one selection. Now, the contesting parties have not been appointed on the result of any one selection. Both the set of parties have been appointed on the basis of two separate selections for direct recruitment. As regards sub-Rule (3) of Rule 8, the same is not applicable for the reasons already given hereinabove.

(24) Now, in view of Rule 8(1), seniority has to be determined on the basis of the date of order of substantive appointment. Admittedly, the date of order of substantive appointment of the appellants is subsequent to that of the contesting respondents, therefore, they have been placed below the latter in the final seniority list. The appointment order of the appellants as already noticed do not contain any backdate from which they may have been appointed so as to entitle them to a claim of seniority from such retrospective date. As regards reliance placed by Sri Mehrotra upon the judgment of Hon'ble the Supreme Court in **Asis Kumar Samanta (supra)**, the same is based on its own peculiar fact and rule position, therefore, it does not help the appellants. So far as the judgment in **Balwant Singh Narwal (Supra)** is concerned, in the said case the selection was already over but appointment letter could not be issued which is not the case here. In the case at hand, the written examination was held but the result was not declared and the interview had not been held based thereon. The result was

declared and interview was held only after completion of selection of contesting respondents and issuance of appointment letters to them, the fact situation in this case is different. Therefore, this decision also do not help the appellants. Reliance placed upon decision of Hon'ble the Supreme Court in **U.D. Lama (supra)** is also misplaced as the said decision is also based on peculiar facts and the rule position applicable therein. The State Government held the selection contrary to the rules which resulted in delayed appointment, therefore, the observations made therein have to be read and understood in the context in which they have been made. The said decision also does not lay down any such principle of law or precedent which may be applicable to the case at hand. The case of **Dr. A.R. Sircar (supra)** was one relating to the State of U.P. itself. The appointment of Dr. A.R. Sircar who was at Sl. No.2 could not be made on account of interim stay granted by the High Court and even thereafter for one reason or the other. The authorities took time to clear the appointment and in the meantime, promotion of respondent nos.4 and 5 therein was effected under the 1988 Rules. Here again, the selection of Dr. A.R. Sircar had already taken place prior to regularization orders of the promotees which is not the case here. Had the selection of the appellants herein already been completed but issuance of appointment orders had been delayed only on account of interim order or the decision the Commission then of course we could have considered the matter on equity but, as already stated, the result of written examination itself had not been declared nor the interview held when selection of the contesting respondents was completed and appointment letters issued. The facts in **Dr.**

A.R. Sircar (supra) were very different. The said decision is also in the facts of the said case. In **A.P. Public Service Commission Hyderabad (supra)**, the question of seniority was not involved, therefore, the said judgment also does not apply to the case at hand. In the facts and circumstances of this case, the date of order of substantive appointment is the basis for determining the seniority especially in view of Rule 8(1) of the Rules, 1991 and learned Single Judge cannot be faulted for not having interfered with the final seniority list dated 10.06.2016.

(25) In view of the above discussion but subject to the observations made hereinabove, the judgment impugned in these appeals does not require any interference nor does the final seniority list which was impugned before the writ court. Accordingly, both the appeals are **dismissed**.

(Om Prakash Shukla,J.) (Rajan Roy,J.)

Order Date :- 18.12.2024

Shanu/-