

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFFIQUE

THURSDAY, THE 26TH DAY OF FEBRUARY 2015/7TH PHALGUNA, 1936

WA.NO. 138 OF 2011 () IN WP(C).4643/2010

AGAINST THE ORDER/JUDGMENT IN WP(C) 4643/2010 OF
HIGH COURT OF KERALA DATED 09-12-2010

APPELLANT(S)/RESPONDENTS:

1. S.AJI, L.D.CLERK (HIGHER GRADE),
DIRECTORATE OF TECHNICAL EDUCATION, TRIVANDRUM.

2. S.S.SUJA, U.D.CLERK (HIGHER GRADE)
DIRECTOR OF TECHNICAL EDUCATION, TRIVANDRUM.

BY ADVS.SRI.K.JAJU BABU
SMT.M.U.VIJAYALAKSHMI
SRI.T.S.SHYAM PRASANTH

RESPONDENT(S)/PETITIONERS/RESPONDENTS:

1. NAZARUDEEN A., HEAD ACCOUNTANT,
CENTRAL POLYTECHNIC, VATTIYOORKAVU
TRIVANDRUM - 695013.

2. JAYACHANDRAN V., U.D.CLERK (HIGHER GRADE)
DIRECTORATE OF TECHNICAL EDUCATION
TRIVANDARUM - 695023.

3. SAJEEV H., U.D.CLERK (HIGHER GRADE)
OFFICE OF THE CONTROLLER OF TECHNICAL, EXAMINATIONS
TRIVANDRUM - 695040

4. BABU K.U.D.CLERK (HIGHER GRADE)
DIRECTOR OF TECHNICAL EDUCATION
TRIVANDRUM - 695023.

WA.NO. 138 OF 2011

5. AJAYAKUMAR .B., U.D.CLERK, DIRECTORATE
OF TECHNICAL EDUCATION, TRIVANDRUM - 695023.

6. STATE OF KERALA, REPRESENTED BY
SECRETARY TO GOVERNMENT, HIGHER EDUCATION, DEPARTMENT
GOVT. SECRETARIAT, TRIVANDRUM - 695001

7. THE DIRECTOR OF TECHNICAL EDUCATION
FORT, TRIVANDRUM - 695023.

R,R1-5 BY ADV. SRI.N.SUGATHAN
R1-R5 BY ADV. SRI.S.PRASANTH (AYYAPPANKAVU)
R1-R5 BY ADV. SMT.VARSHA BHASKAR
R BY GOVERNMENT PLEADER SHRI C.R. SHYAMKUMAR

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ALONG WITH
W.A. NO.150/2011, THE COURT ON 26.02.2015 DELIVERED THE
FOLLOWING:

“C.R.”

ASHOK BHUSHAN, Ag. C.J.

and

A.M. SHAFFIQUE, J.

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W.A. Nos.138 & 150 of 2011

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Dated this the 26th day of February, 2015

J U D G M E N T

Ashok Bhushan, Ag. C.J.

These two Writ Appeals have been filed against the common judgment dated 09.12.2010 in W.P(C) Nos.4643 and W.P(C) No. 10475 of 2010. W.A. No.138 of 2011 is being treated as the leading Writ Appeal and reference of pleadings in W.P(C) No.4643 of 2010 shall suffice in deciding both the Writ Appeals. Appellants in both the appeals were respondents in the Writ Petitions. Parties shall hereinafter be referred to as described in the respective Writ Petitions.

2. Brief facts giving rise to W.P(C) No.4643 of 2010 (**Nazarudeen A. and Others v. State of Kerala and Others**) are: Petitioners, five in number, were

appointed as Lower Division Clerks on the advice of the Kerala Public Service Commission in the Department of Technical Education. Petitioners were advised by the Kerala Public Service Commission on 08.08.1990, 01.12.1990, 01.12.1990, 18.01.1991 and 27.01.1991, respectively in pursuance of which they were appointed in different Districts of the State. A final seniority list of Lower Division Clerks and Upper Division Typists who were eligible for promotion as Upper Division Clerks was published vide Circular dated 10.10.1996. Respondents 3 and 4 were also advised for appointment as Lower Division Clerks by the Kerala Public Service Commission as per advice dated 23.09.1998 and 26.09.1991. Respondents 3 and 4 were appointed as Lower Division Clerks in Thiruvananthapuram District. Again a provisional seniority list of Lower Division Clerks and Upper Division Typists who became eligible for promotion as Upper Division Clerks was published on 18.11.1997. The seniority list was finalised and

published by Circular dated 03.01.1998 (Ext.P7). Again a provisional seniority list of Lower Division Clerks and Upper Division Typists was published on 20.08.1998 and it was finalised on 14.10.1998 (Ext.P8). Petitioners 1 to 5 were promoted to the post of Upper Division Clerk on 03.12.1995, 18.12.1996, 18.12.1996, 29.12.1998 and 07.07.2000, respectively. A provisional gradation list of Upper Division Clerks for the period from 01.04.1988 to 31.03.1999 was published on 05.05.2000 wherein Head of all Government Institutions was directed to obtain appeals if any which may be sent to the Director of Technical Education.

3. By order dated 22.12.2000 of the Director of Technical Education, the gradation list was finalised. In all the gradation lists of Lower Division Clerks and Upper Division Clerks, all the petitioners were given seniority from the date of their advice by the Kerala Public Service Commission and similarly respondents 3 to 5 were also given the same date for purpose of

seniority. In the gradation list although petitioners 1 to 4 were shown senior to respondents 3 to 5 stating their date of advice by the Kerala Public Service Commission for the purpose of seniority but no appeals or objections were filed by the private respondents against the seniority/gradation list. Respondents 3 to 5 were also subsequently promoted as Upper Division Clerks on the basis of taking their seniority from the date of their advice. Petitioners were transferred to Thiruvananthapuram on 17.11.1996, 01.01.1996, 16.11.1994, 25.05.1996 and 14.01.1999 and they joined duty in Thiruvananthapuram. No dispute arose regarding seniority between the petitioners and private respondents regarding their seniority as Lower Division Clerks/Upper Division Clerks. On 19.08.2005 a few Lower Division Clerks were promoted as Upper Division Clerks. The Director of Technical Education on 19.09.2006 passed an order revising the date of promotion of some of the employees finding that claim

of the employees belonging to SC/ST for temporary exemption from the test qualification has not been considered. Representation was filed by 6 Upper Division Clerks dated 04.10.2006 wherein it was pointed out that some of the Lower Division Clerks who were promoted earlier can be assigned seniority only on the basis of their seniority position after the inter-district transfers. Writ Petition No.20519 of 2005 was filed by respondents 3 and 4 raising their grievance of not being given promotion to higher post, they referred to the provisional list of Lower Division Clerks who acquired qualification during December, 2003 to June, 2004 and December, 2004 as published on 08.05.2007. Irregularities were alleged in preparation and assignment of seniority to inter-district transferees. Grievance raised by those petitioners was that the seniority list is not being finalised. Petitioners of that case also placed reliance on the judgment of the Apex Court in **Sudhakaran v. State of Kerala** (2006 [2]

KLT 817 (SC) and submitted that seniority be fixed according to the law laid down by the Apex Court and the incumbent who applied for inter-district transfer shall forfeit their seniority. The learned Single Judge by his order/judgment dated 16.07.2008 disposed of the Writ Petition directing the 1st respondent to finalise the seniority list taking note of the judgment in **Sudhakaran v. State of Kerala** (supra). Against the said judgment of the learned Single Judge, Nazarudeen, A., and Jayachandran, V., petitioners 1 and 2 in W.P(C) No.4643 of 2010, filed W.A. No.1737 of 2008 after taking leave of the Court. By the Writ appeal it was claimed that the direction issued by the learned Single Judge to determine the seniority in accordance with the law laid down in **Sudhakaran v. State of Kerala** (supra) be set aside. It was stated that seniority of Lower Division Clerks/Upper Division Clerks has been finalised on the basis of which promotions have also been made which was never made subject to challenge by anyone, hence

at the instance of persons who did not earlier challenge the seniority no direction can be issued to revise the seniority list. A statement was filed by the Government in W.A. No.1737 of 2008 stating that the Government has taken a decision that appointments/promotion carried out in the Department till the year 2004 would be considered as settled seniority and the same would not be disturbed. A Division Bench of this Court by its judgment dated 23.03.2009 disposed of the Writ Appeal disapproving the direction of the learned Single Judge. The Division Bench observed that the Government may take a decision in accordance with law, considering objections of both parties. After the judgment of the Division Bench, proceedings were initiated for finalising seniority. A gradation list was prepared with reference to the rule of district-wise recruitment and finally the Director of Technical Education issued a gradation and seniority list of Lower Division Clerks with District-wise Recruitment Rules by order dated 06.01.2010 (Ext.P29)

wherein the details of inter-district/inter-departmental transfer was mentioned which was reckoned for the purpose of seniority. In view of the seniority list dated 06.01.2010 the date of reckoning of seniority was changed from 08.08.1990 to 17.11.1996, 01.12.1990 to 01.01.1996, 01.02.1990 to 16.11.1994, 18.01.1991 to 25.05.1996 and 27.10.1993 to 14.01.1999, respectively for petitioner Nos. 1 to 5. The private respondents who were appointed at Thiruvananthapuram itself took their seniority from the date of advice. Petitioners, aggrieved by the said seniority list (Ext.P29), filed W.P.(C) No.4643 of 2010 praying for the following reliefs:

"(i) To issue a writ of certiorari or any other appropriate writ or order quashing Exts.P25 letter of the 1st respondent directing to revise the settled seniority list;

(ii) To issue a writ of certiorari or any other appropriate writ or order quashing Ext.P27 Circular of the 2nd respondent proposing to revise the gradation list of L.D. Clerks in the Department for the period from 01.04.1988 to 31.03.2009;

(iii) To issue a writ of certiorari or any other appropriate writ or order quashing Ext.P29 order and the seniority list appended to that order;

(iv) To issue an appropriate writ or order

declaring that the long settled seniority of the petitioners in the category of L.D. Clerk as per Ext.P8 Circular dated 14.10.1998 and in the category of U.D.Clerk as per Ext.P10 proceedings dated 21.12.2000 is not liable to be revised or modified;

(v) To issue an appropriate writ or order declaring that on the basis of the assurance in Ext.P17 Statement filed before this Court and in Annexure R3(a) Government letter dated 19.9.2008 produced along with the Statement, the settled seniority of these petitioners and the promotions ordered upto 2004 are not liable to be revised or modified."

4. In the Writ Petition counter affidavits have been filed by the private respondents as well as the State. Learned Single Judge after hearing parties by judgment dated 09.12.2010 allowed the Writ Petition, set aside Exts.P24, P25 and P29 and held that petitioners' seniority settled by Exts.P6 to P10 cannot be unsettled and they shall retain the said seniority. Against the said judgment W.P(C) No.4463 of 2010, W.A. No.138 of 2011 has been filed. W.A. No.150 of 2011 has been filed against the judgment in W.P(C) No.10475 of 2010, disposed of along with W.P(C) No.4643 of 2010.

5. Petitioner in W.P(C) No.10475 of 2010 was

advised by the Kerala Public Service Commission in Idukki District on 21.10.1998. He was transferred to Thiruvananthapuram as per order dated 10.11.2000. Petitioner's case was that there being seniority list of Lower Division Clerks as per proceeding dated 01.09.2003 he was ranked at Sl. No.45 by assigning seniority in Lower Division Clerk cadre with effect from 01.09.1998 whereas in the provisional seniority list dated 28.06.2006 he was wrongly assigned seniority with effect from 23.12.2000. Petitioner in the Writ Petition made reference to the judgment of the learned Single Judge dated 16.07.2008 against which he filed an appeal before the Division Bench. In pursuance of the judgment of the Division Bench final seniority list dated 06.01.2010 was published by the Director of Technical Education, Thiruvananthapuram which was challenged by the petitioner in the Writ Petition praying for quashing the seniority list and other prayers. Petitioner also claimed that he should be considered for promotion

giving seniority in the Lower Division Clerk Cadre from 01.09.1998 and not from 23.12.2000. Writ Petition was allowed by the learned Single Judge against which Writ Appeal has been filed.

6. Shri. K.Jaju Babu, learned Senior Advocate appearing for the appellants challenging the judgment of the learned Single contended that the petitioners could not have been assigned seniority with effect from their date of advice by the Kerala Public Service Commission in view of the fact that subsequently they sought transfer to Thiruvananthapuram on different dates due to which they forfeit their seniority and shall reckon their seniority only from the date on which they joined at Thiruvananthapuram. He submits that there are specific provision in Rule 27 of the Kerala State & Subordinate Services Rules, 1958 (for short, "the Rules") which provides that seniority of persons on mutual or inter-unit or inter-departmental transfer from one Unit to another within the same Department on request shall

be determined with reference to the dates of their joining duty in the new Unit/Department. He submitted that the above provision by proviso to Rule 27 was inserted by G.O(P) 11/76/PD dated 13.01.1976 published in the Gazette dated 03.02.1976 according to which statutory provision petitioners cannot claim that their seniority be reckoned from the earlier date. He further submitted that judgment of the Apex Court in **Sudhakaran v. State of Kerala** (supra) governs the issue raised in the Writ Appeal and the Apex Court in the said judgment has clearly laid down that by transfer on request incumbent shall lose his earlier seniority and it only reckons from the date of transfer. He submits that Exts.P6 to P10 were the seniority lists which did not contain details of the inter-district transfer due to which the respondents could not file any objection to the seniority list, hence it cannot be held that seniority list published as Exts.P6 to P10 has become final. It is submitted that the State Government has rightly given

effect to the provisions of Rule 27 while finalising the seniority by Ext.P29. Learned Single Judge committed an error in quashing the seniority list which was based on statutory provision and was in accordance with the law laid down by the Apex Court **Sudhakaran v. State of Kerala** (supra).

7. Shri. S Prasanth, learned counsel for the petitioners refuting the submissions of the learned counsel for the appellants supported the judgment of the learned Single Judge. It is submitted that the seniority lists (Exts.P6 to P10) having been finalised the seniority, is settled cannot be permitted to be unsettled after a lapse of more than a decade. It is submitted that the learned Single Judge has rightly taken the view that seniority of the petitioners had been settled reckoning their seniority from the date of their advice by the Kerala Public Service Commission and the same cannot be allowed to be challenged when no objections were filed against the seniority list within the

reasonable time. It is submitted that the State Government itself has also filed a statement in W.A. No.1737 of 2008 that the Department has not forfeited the seniority of Lower Division Clerks on transfer to another Unit and on that basis seniority was finalised and promotion was made and that the Government does not propose to unsettle the seniority already settled upto 2004. It is submitted that the State Government itself having decided not to unsettle the promotion and seniority prior to 2004, there was no reason for change of view by the State Government by issuing direction to revise the seniority of Lower Division Clerks/Upper Division Clerks. It is submitted that judgment of the Apex Court in **Sudhakaran v. State of Kerala** (supra) is not applicable in the present case since in that case which related to a different Department, viz., Registration Department parties were adjudicating and litigating for their rights, hence the issue of unsettling the settled seniority has not arisen in

the said case. It is submitted that Ext.P29 which unsettled the seniority which had already been finalised cannot be sustained and the learned Single Judge has rightly set side the entire exercise leading to Ext.P29.

8. Learned counsel for the parties have placed reliance on the judgments of the Apex Court and this Court which shall be referred to while considering the submissions in detail.

9. The issue between the parties is with regard to their respective seniority in the cadre of Lower Division Clerk/Upper Division Clerk as finalised by Exts.P6 to P10 which have been revised by Ext.P29 re-fixing their seniority reckoning the period from the date of their inter-unit/inter-departmental transfer to Thiruvananthapuram. The seniority list of Lower Division and Upper Division Clerks was finalised by Exts.P6 to P10 reckoning the seniority of petitioners from the date of advice by the Kerala Public Service Commission to which no objection was filed by any

person. By Ext.P29, earlier seniority list has been revised.

10. The relevant rule for determining the seniority is Rule 27 of the Rules. As per Rule 27 seniority of a person in service, class, category or grade shall unless he has been reduced to a lower rank as punishment, be determined by the date or the order of his first appointment to such service, class, category or grade. A proviso was added to Rule 27 as per by G.O(P) 11/76/PD dated 13.01.1976 published in the Gazette dated 03.02.1976 providing that seniority of persons on mutual or inter-unit or inter-departmental transfer from one Unit to another within the same Department on request shall be determined with reference to the dates of their joining duty in the new Department. Relevant portion of Rule 27 is quoted below:

*"27. **Seniority**-¹[(a) Seniority of a person in a service, class, category or grade shall, unless he has been reduced to a lower rank as punishment, be determined by the date of the order of his first appointment to such service, class, category or grade.*

Explanation:-For the purposes of this sub-rule, "appointment" shall not include appointment under rule 9 or appointment by promotion under rule 31.

This amendment shall be deemed to have come into force with effect on and from the 17th December, 1958, but shall not affect the seniority of any member of a service settled prior to the date of publication of this amendment in the Gazette].

²[Provided that the seniority of persons on mutual or inter-unit or inter-departmental transfer from one unit, to another within the same department or from one department to another, as the case may be, on requests from such persons shall be determined with reference to the dates of their joining duty in the new unit or department. In the case of more than one person joining duty in the same grade in the same unit or department on the same date, ³[Seniority shall be determined,-

(a) if the persons who join duty belong to different units or different departments, with reference to their age, the older being considered as senior, and

(b) if the persons who join duty belong to the same category of post in the same department, in accordance with their seniority in the unit or department from which they were transferred.

Note:-(i) This amendment shall be deemed to have come into force with effect from 28-12-1960.

(ii) Cases already settled or disposed of prior to the issue of this amendment shall not be reopened.]

Rule 27B provides that person aggrieved from a

seniority list may raise a claim within a period of six months which is to the following effect:

"27B. In case of disputes regarding seniority and matters connected with it by reason of any order of Government or any order of an authority subordinate to Government, representations of such order shall be from the date of receipt of the order, or the date of publication of the order in the Kerala Gazette, whichever is later."

11. From the above provision it is clear that person obtaining transfer on a request to another District as a Lower Division Clerk has to reckon his seniority from the date of joining at the new unit. In the present case all the petitioners had joined their service other than the District of Thiruvananthapuram after their advice by the Kerala Public Service Commission and appointment in different Districts. Thus it is clear that the respondents could have very well objected to the seniority lists, Exts.P6, P7 and P8 seniority of Lower Division Clerks. But fact of the matter is that giving seniority to the petitioners from the date of advice by the Kerala Public Service Commission was never

questioned and gradation list was prepared according to the date of advice by the Kerala Public Service Commission. The reason for preparing the gradation list in the above manner has come on record on behalf of the State Government and Director of Technical Education. As noted above, W.A. No.1737 of 2008 was filed by the petitioners against the judgment of the learned Single Judge dated 23.03.2008. In the Writ Petition filed by the respondents the learned Single Judge directed finalisation of the seniority in accordance with the judgment of the Apex Court in **Sudhakaran v. State of Kerala** (supra). The State Government had filed a statement which has been brought on record as Ext.P17. In paragraph 3 of the statement it was clearly stated that the criteria for inter-district transfer was not implemented in the Department. It was further stated that the Government has taken a decision that appointments/promotions carried out in the Department till the year 2004 would be considered as settled

seniority and the same would not be disturbed. A clarification dated 19.09.2008 issued by the Government to the above effect was also referred to in the statement. It is useful to quote the following from the statement:

"It is respectfully submitted that right from the commencement of the Department the transfer and postings were done considering the whole department as a Single Unity by maintaining the ratio of LDCs and UDCs as 1:1. The criteria stipulated for inter-district transfer were not implemented in the department and such transfer were given to the candidates, who completed 5 years of services without disturbing their seniority. The above practice was not subject to any challenge till the year 2004. If any seniority is refixed from the year 1980 it would affect the entire service as well which is not in the interest of the department. In the above circumstances the fourth respondent had addressed this respondent seeking clarifications in the matter. In the light of the impugned judgment clarifications had been issued in the matter by issuance of communication No.2761/G2/2008/H.Edn. Dated 19-9-08. Considering the above facts the Government has taken a decision that appointment/promotions carried out in the Department till the year 2004 would be considered as settled seniority and the same would not be disturbed. Due to the pending litigations, promotions were not effected from the post of LDC to UDC from the year October 2004 onwards. It has

been clarified that the promotions to be effected from the year October 2004 would be made on the basis of district-wise seniority and for the same the principles as laid down by the Hon'ble Supreme Court regarding inter-district transfers would be implemented in the Department. The appellants it is respectfully submitted who have obtained promotions prior to 2004 would not be in any manner affected by the same."

12. In the counter affidavit filed in the Writ Petition on behalf of the State it was also pleaded that as per Rules, after inter-district transfer the incumbent was to lose his seniority in the new District. However, that direction was not followed in the Department of Technical Education. It is useful to quote paragraph 5 of the counter affidavit:

"5. The contention that the petitioners are permanent employees is not true to facts. They are, in fact, officiating employees. The petitioners were appointed initially outside Thiruvananthapuram District. As per DRB Rules, and LD Clerk, obtaining inter-district transfer will entail loss of seniority, if such transfer is made on request. In the instant case, all the petitioners obtained inter-district transfer on their own requests to Thiruvananthapuram. As such they are bound by the DRB Rules and liable to loss their seniority in the new District. However, this practice was not followed in the Technical

Education Department.”

13. From the above it is clear that the Technical Education Department prepared the seniority list without forfeiting the seniority of Lower Division Clerks on his inter-district transfer and the stand taken by the Department was that the entire Department was treated as one Unit. Thus seniority list Exts.P6, dated 10.10.1996, P8 dated 14.10.1998 and P10 dated 22.12.2000 were finalised on the said basis. The respondents could have very well raised objection questioning the stand of the Department as well as the claim of the petitioners at the relevant time raising objection to the giving seniority to the petitioners from the date of advice by the Kerala Public Service Commission but no such objection was raised. Thus there cannot be any dispute that according to the statutory rules after transfer of one Lower Division Clerk to another District on his request he should take seniority from the date of joining in the new District/Unit/

Department. Learned Single Judge has allowed the Writ Appeal of the petitioners on the ground that the settled seniority which was finalised and remained unchallenged for several years could not be allowed to be challenged by the private respondents after lapse of several years.

14. From the facts which have been brought on record it is clear that for the first time respondents filed a Writ Petition in this Court in which Writ Petition none of the Writ Petitioners herein were not made parties and certain general directions were asked for. Those petitioners therein claimed that on inter-district transfer an incumbent should forfeit his seniority and seniority list be prepared accordingly. The said Writ Petition was filed by the respondents in the year 2006. Seniority was finalised in the year 1996. Thus after a decade the said issue was raked up by the respondents. By respondents not questioning the final seniority list prepared years ago whether they should be allowed to

challenge the seniority list is the question to be answered in the present case.

15. Apex Court had occasion to examine the issue of re-opening the seniority after lapse of a reasonable period of time in **B.S. Bajwa and Another v. State of Punjab** ([1998] 2 SCC 523). In the above case the appellants had joined the service in the year 1971 and 1972 and their seniority was shown from the date of advice, i.e., 04.05.1971 and 12.05.1972. In the year 1984 they filed a Writ Petition in the High Court claiming much earlier date of appointment in the Department which Writ Petition was allowed. The appellants were given seniority from much earlier date of appointment. An appeal to the Division Bench of the High Court was filed against the judgment of the learned Single Judge which although was allowed but amounted to dismissal as observed by the Apex Court. The Apex Court in the said context laid down the following proposition in paragraph 7:

"7. Having heard both sides we are satisfied that the writ petition was wrongly entertained and allowed by the Single Judge and, therefore, the judgments of the Single Judge and the Division Bench have both to be set aside. The undisputed facts appearing from the record are alone sufficient to dismiss the writ petition on the ground of laches because the grievance made by B. S. Bajwa and B. D. Gupta only in 1984 which was long after they had entered the department in 1971-72. During this entire period of more than a decade they were all along treated as junior to the other aforesaid persons and the rights inter se had crystalised which ought not to have been reopened after the lapse of such a long period. At every stage the others were promoted before B. S. Bajwa and B. D. Gupta and this position was known to B. S. Bajwa and B. D. Gupta right from the beginning as found by the Division Bench itself. It is well settled that in service matters the question of seniority should not be reopened in such situations after the lapse of a reasonable period because that results in disturbing the settled position which is not justifiable. There was inordinate delay in the present case for making such a grievance. This alone was sufficient to decline interference under Art.226 and to reject the writ petition."

The Apex Court in the said case clearly laid down that in the service matter question of seniority should not be reopened after the lapse of a reasonable period. In the present case it is clear that seniority list of Lower

Division Clerk was not only finalised but was given effect to since the petitioners were promoted to the next higher cadre, viz., Upper Division Clerk and permitting revision of seniority after lapse of a decade would have affected not only their seniority but the date of promotion also. Learned counsel for the petitioners have also placed reliance on the judgment of the Apex Court in **Shiba Shankar Mohapatra v. State of Orissa** (AIR 2010 SC 706). In the said case the Apex Court had laid down that delay in challenging the seniority within a reasonable period is fatal and the reasonable period for challenging the seniority is 3 to 4 years. In the above case seniority list was finalized in 1997 and 1999. Two Officers approached the Tribunal by filing O.A. No.316 of 2000 which application was allowed on 27.04.2005 with a direction to consider the representation. Judgment of the Tribunal was challenged in the High Court which was disposed of by the High Court against which the matter was taken in

appeal. One of the submissions which was pressed into service before the Apex Court was that long standing seniority cannot be permitted to be challenged at a belated stage. The Apex Court laid down the following in paragraphs 16, 17 and 18:

"16. The question of entertaining the petition disputing the long standing seniority filed at a belated stage is no more res integra. A Constitution Bench of this Court, in Ramchandra Shanker Deodhar and Ors. v. State of Maharashtra and Ors., AIR 1974 SC259, considered the effect of delay in challenging the promotion and seniority list and held that any claim for seniority at a belated stage should be rejected inasmuch as it seeks to disturb the vested rights of other persons regarding seniority, rank and promotion which have accrued to them during the intervening period. A party should approach the Court just after accrual of the cause of complaint. While deciding the said case, this Court placed reliance upon its earlier judgments, particularly in Tilokchand Motichand v. H.B. Munshi, AIR 1970 SC898, wherein it has been observed that the principle, on which the Court proceeds in refusing relief to the petitioner on the ground of laches or delay, is that the rights, which have accrued to others by reason of delay in filing the writ petition should not be allowed to be disturbed unless there is a reasonable explanation for delay. The Court further observed as under :-

"A party claiming fundamental rights must move the

Court before others' rights come out into existence. The action of the Courts cannot harm innocent parties if their rights emerge by reason of delay on the part of person moving the court."

17. This Court also placed reliance upon its earlier judgment of the Constitution Bench in *R.N. Bose v. Union of India and Ors.*, AIR 1970 SC470, wherein it has been observed as under :-

"It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be defeated after the number of years."

18. In *R.S. Makashi v. I.M. Menon and Ors.*, AIR 1982 SC101, this Court considered all aspects of limitation, delay and laches in filing the writ petition in respect of inter se seniority of the employees. The Court referred to its earlier judgment in *State of Madhya Pradesh and Anr. v. Bhailal Bhai etc. etc.*, AIR 1964 SC1006, wherein it has been observed that the maximum period fixed by the Legislature as the time within which the relief by a suit in a Civil Court must be brought, may ordinarily be taken to be a reasonable standard by which delay in seeking the remedy under Article 226 of the Constitution can be measured. The Court observed as under :-

"We must administer justice in accordance with law and principle of equity, justice and good conscience. It would be unjust to deprive the respondents of the rights which have accrued to them. Each person ought to be entitled to sit back and consider that his appointment and promotion effected a long time ago would not be set-aside after the lapse of a number of years.....The petitioners have not furnished any valid explanation whatever for the inordinate delay on their part in approaching the Court with the challenge against the seniority principles laid down in the Government

Resolution of 1968... We would accordingly hold that the challenge raised by the petitioners against the seniority principles laid down in the Government Resolution of March 2, 1968 ought to have been rejected by the High Court on the ground of delay and laches and the writ petition, in so far as it related to the prayer for quashing the said Government resolution, should have been dismissed."

In paragraph 29 it is stated that reasonable time to challenge the seniority list is 2 to 4 years, which is to the following effect:

"29. Thus, in view of the above, the settled legal proposition that emerges is that once the seniority had been fixed and it remains in existence for a reasonable period, any challenge to the same should not be entertained. In K.R. Mudgal, (AIR 1986 SC2086) (supra), this Court has laid down, in crystal clear words that a seniority list which remains in existence for 3 to 4 years unchallenged, should not be disturbed. Thus, 3-4 years is a reasonable period for challenging the seniority and in case someone agitates the issue of seniority beyond this period, he has to explain the delay and laches in approaching the adjudicatory forum, by furnishing satisfactory explanation."

16. A Full Bench judgment of this Court relied on by the learned counsel for the petitioners reported in **Pavithran v. State of Kerala** (2009 [4] KLT (F.B.) also fully supports the case of the petitioners that long

standing seniority cannot be allowed to be challenged.

It is useful to quote paragraph 8 of the judgment:

"8. Whenever an adverse order is passed against a person, unless the same is challenged before the appropriate forum, within the prescribed time limit, the said order will become final and the person, affected by it, will also be bound by it. It is a well settled principle in Administrative Law that, there are no void orders in absolute sense in administrative matters. There are only voidable orders. Unless a person aggrieved takes recourse to the appropriate remedy at the appropriate time, even an illegal order will be treated as valid and binding. See the observations of Wade in Administrative Law, 6th Edn.

'The truth of the matter is that the Court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the Court may refuse to quash it because of the plaintiffs lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case the 'void' order remains effective and is, in reality, valid. It follows that an order may be void for one purpose and valid for another, and that it may be void against one person but valid against another. A common case where an order, however void, becomes valid is where a statutory time limit expires after which its validity cannot be questioned. The statute does not say that the void order shall be valid; but by cutting off legal remedies it produces that result.'

The above statement of law has been quoted with approval by the Apex Court in several decisions, and one of them is State of Punjab v. Gurdeb Singh, 1992 KHC 209 : 1991 (4) SCC 1 : 1992 (1) KLT SN 37 : AIR 1991

SC 2219 : 1991 SCC (L&S) 1082 : 1991 (17) ATC 287 : 1991 (5) SLR 1 : AIR 1992 SC 111. We notice that Exts. P2 and P3 orders were passed by competent statutory authorities. They could have granted the reliefs sought by the sixth respondent, but, they have declined to do that. The sixth respondent has not chosen to challenge those orders before the higher forum or this Court and as mentioned earlier, he allowed them to become final. Therefore, those orders are to be treated as valid. They cannot be ignored or treated as void ab initio and therefore, of no effect now. It is a well settled principle in service jurisprudence that, a person who enjoyed a seniority position for quite some time is entitled to sit back. The seniority position shall not, normally, be disturbed lightly. The said position is covered by several decisions of this Court and also the Apex Court, cited by the learned counsel for the appellant. It is not in the interest of administration or public interest to allow a person, who slept over his right, to rake up a stale claim, tinker with the seniority list and demoralise other members of the service. We find no reason not to apply the above principle applicable to members of public service, to the persons working in aided schools governed by the KER, also. There cannot be any separate principle for such schools concerning seniority, sit back, etc. In view of the above position, we are of the view that Ext. R6(a) judgment does not lay down the correct legal position. We overrule the said decision. We uphold the view taken by the Division Bench in Usha Devi's case (supra), as laying down the correct legal position."

The challenge to seniority list within a reasonable

period assumes more importance for the present case in view of the specific provision in the Rules that challenge to seniority is to be made within a period of six months.

17. Learned counsel for the appellants in support of the the submissions has placed heavy reliance on the judgment of the Apex Court in **Sudhakaran v. State of Kerala** (Supra). The said case related to Lower Division and Upper Division Clerks of the Registration Department. The Apex Court had occasion to consider Rule 27 of the Rules in the said case. The Apex Court in the said case relying on Rule 27 has laid down that Lower Division/Upper Division Clerk joining a District on own request has to lose seniority and his/her seniority can be reckoned from the date when he/she joins at a place. There cannot be any dispute to the proposition laid down by the Apex Court in the said case. In the above case the question was as to whether seniority can be treated as settled seniority. The Apex Court held

that the matter has been continuously under litigation since 1970 hence the argument that settled seniority has been unsettled was rejected. Question as to seniority has been settled long time and challenge made to the said seniority with unreasonable delay is a question of fact which has to be decided in the facts of each case. In the above case the Apex Court has noted that seniority list was prepared on 06.04.1987 of the Lower Division Clerks and 09.12.1987 of the Upper Division Clerks which was challenged before the High Court by filing O.P. No.4204 of 1990 which Writ Petition was disposed of on 08.05.1990 directing to consider the representation by the respondent for re-fixation. In the above background the Apex Court held that the matter throughout was under litigation. Hence treating the seniority as settled does not arise. Thus the said judgment is clearly on its own facts where the Apex Court held that in the facts and circumstances of the case the seniority cannot be treated as settled.

18. Learned counsel for appellants has further placed reliance on a judgment reported in **State of Kerala v. Thomas** (2013 [1] KLT 358) where a Division Bench of this Court held that seniority is not a vested right and retrospective effect given to the amendment in Rule 27(a) is valid. There cannot be any dispute to the above proposition that retrospective effect can be given to the amendment in Rule 27 which is valid. Retrospective effect to the provisions of amended Rule 27(a) was challenged. The Division Bench laid down the following in paragraphs 8, 9 and 13:

“8. Petitioner contended that by virtue of the Rule prevailing as on the date of Ext. P1 he was entitled for inter - departmental transfer without losing his seniority and such a vested right cannot be taken away by a subsequent amendment to the Rules. Hence the petitioner challenges the retrospective effect of the amendment to the R.27(a) and contends that the implication of the note can have only prospective operation.

9. The appellants however supported the stand taken in Ext. P2. Learned Single Judge however, relying upon the judgment of the Supreme court in Union of India v. Tushar Ranjan Mohanty, 1994 (5) SCC 450 came

to the conclusion that since a benefit was available to the petitioner as on the date of his entry into the cadre in the form of 4th proviso to R.27 (a) of KS & SSR, the same cannot be taken by Ext. P2 note to reduce 7 years of service and the same being a vested right, to that extent, the note has only prospective operation and the petitioner shall be entitled to retain seniority based on Ext. P1.

13. The learned counsel appearing for the 1st respondent however contended that as far as the petitioner is concerned his option was to get an appointment at Pathanamthitta and only on account of the fact that there was no district office of Medical Education Department in Pathanamthitta district and that it was without his consent that he was posted at Thiruvananthapuram Head Office. He had made a request for inter - departmental transfer purely relying upon the 4th proviso to R.27(a). According to him, if he would have lost his seniority, he would not have opted for a transfer to Pathanamthitta. Such an argument though can be appreciated on taking a sympathetic approach will not stand in the eye of law and service jurisprudence. In so far as the government has that right to legislate on service conditions and when it is clear that even the retrospective legislation is permissible under Art.309 of the Constitution of India and when it is held by the Supreme Court that the seniority is not a vested right, we cannot exercise any sympathy in the matter.

The said judgment is on its own facts and does not help the appellants in the present case.

19. Another Full Bench judgment reported in **Ramachandran v. Madhu** (2012 [2] KLT 283 (F.B.)) has been relied on by the learned counsel for the appellants. In the said case the question which was considered by the Full Bench is noted in paragraph 1 which is to the following effect:

"Whether an employee who has secured a district - wise appointment when transferred on request to another district before completing five years will have to surrender his entire five years of service, so as to claim seniority in the transferred unit even if the transfer is after one year of his appointment?"

Issue which was raised in the above Full Bench case is not the issue which has arisen in the present Writ Appeals. Judgment of the Full Bench thus has no application on the issue which has arisen in the present Writ Appeals. The Full Bench in the said case held that persons who have transferred inter-district before 5 years cannot get seniority without the order of relaxation. The following was laid down in paragraph 46:

"46. We may add here, further that, they had no grievance about the crucial conditions in Exts. P4 and P5 at any point of time. They continued after such transfer by retaining their lien in the parent divisions. Eight of them were included in the provisional seniority list Ext. P8 in Kannur District itself being their district of recruitment. Thereafter, appellant No. 5 filed a representation to the first respondent claiming seniority in Excise Division, Palakkad and pursuant to the direction issued by this Court in OP No. 34292/2001 to consider the representation, the Joint Excise Commissioner, heard the matter and issued Ext. P10 proceedings to include his name in the seniority list of Excise Guards in Palakkad Division with effect from the date on which he joined at Palakkad Division and gave seniority from that date. He had completed only less than 3 months in Kannur Division, at the time of transfer. Again, by Ext. P11 direction was issued to the Assistant Excise Commissioner to obtain option from those Excise Guards who were transferred either to continue in Kannur or to remain in the District to which they were transferred, within three days. Finally, by Ext. P12 directions were issued to include the remaining of them in the final seniority list in the transferred district. Thus, options were called for after a long number of years and this exercise is unknown to the scheme of inter - district transfer. They were never given any relaxation by a decision of the Council of Ministers also. Therefore, the exercise done is clearly one in perpetuation of an illegality. If that be so, they cannot get seniority before five years which is the rule as far as regular inter - district transfers are concerned. If the

transfer is effected before five years, and without getting an order of relaxation from the five year rule the seniority claimed in the transferred unit / district based on the order of transfer, cannot be granted."

The above said Full Bench judgment has no application to the facts of the present case.

20. In view of the foregoing discussion we are of the view that the learned Single Judge has not committed any error in allowing the Writ Petition holding that long standing seniority which was never challenged by the private respondents could not be allowed to be challenged after lapse of several years. Learned Single Judge has rightly come to the conclusion that seniority of Writ Petitioners should be reckoned in the cadre of Lower Division and Upper Division Clerks as per Exts.P6 to P10 and revising of such seniority by assigning revised dates for their seniority is unjustifiable. On a consideration of the relevant facts and circumstances the learned Single Judge has rightly come to the above conclusion.

21. Learned counsel for the appellants has also

made a submission that the seniority lists, Exts.P6 to P10 did not mention all the details so as to enable the party respondents to file objection or raise any dispute to the seniority lists. Seniority list, Ext.P6, was circulated by Circular dated 10.10.1996. The subject of the Circular was to the following effect:

"No.ED4/37964/95

*Office of the Director
Technical Education,
Thiruvananthapuram
Dated 10.10.1996*

CIRCULAR

Sub:- Education - Technical - Final seniority list of LD Clerk/UD Typists, who have passed Account test/completed 50 years of age and eligible for promotion as UD Clerks on the basis of Department test result published on 9.9.2004 Final seniority list published on - regarding (Gazette dated 13.12.94).

Ref:- This office Circular even No.dated 13.9.96

A final seniority list of LD Clerks/UD Typists who have passed Account test/attained 0 years of age and eligible for promotion as UD Clerks taking into account of result of the departmental test published on 9.9.94 (Gazette dated 13.12.94) is enclosed (The list is valid for the arising vacancies of UD Clerks from 9.9.94 to 14.3.95 inclusive of both days)

*Sd/-
N.Vijayakumaran,
Administrative Officer."*

Date of advice and date of publication of the results

were also mentioned in the list. The Subject clearly mentioned the list as “final seniority list of LD Clerks/UD Typists.” It further mentioned that the list is for the purpose of promotion as Upper Division Clerk. There was no ambiguity regarding the list being final seniority list for the purpose of promotion. Any person whose name was not there in the list or who was shown junior to any of the petitioners, had every right to object to the seniority list on any ground permissible under law. The fact that seniority list did not contain all the details regarding a candidate in no manner affect finality of the seniority list. With regard to Ext.P10, seniority list was circulated by order dated 22.12.2000 passed by Director of Technical Education. The order with which seniority (Ext.P10(a) circulated mentioned as follows:

"DIRECTORATE OF TECHNICAL EDUCATION

Proceedings

Education - Technical - Provisional Gradation list of UD Clerks - promoted during the period from 1.4.1988 - Finalised Orders Issued

ESTABLISHMENT (EG) SECTION
No.EG3-15715/2000 dated, Thiruvananthapuram
22.12.2000

Read:- This Office letter No.EG3-15715/2000 dated 5.5.2000.

ORDER

AS per the letter read above, a provisional gradation list of UD Clerks of this Department for the period from 1.4.88 to 31.3.99 was published, inviting claims and objections. The appeals received in this Officer were examined and necessary changes effected wherever required. Accordingly, the provisional list of UD Clerks for the period from 1.4.88 to 31.3.99 is finalised and appended. The Heads of Institutions are requested to circulate the list among UD Clerks in their Officer.

*Sd/-
Administrative Officer"*

Exhibit P10(a) contained a heading "Extract of the Final Gradation List of UD Clerks who have appointed/promoted from 01.04.1988 to 31.03.1999." The list contained name, date of birth, general qualification, special qualification, date of promotion, date of continuous service, etc. We thus are not persuaded to accept the argument of the learned counsel for the appellants that the seniority list could not be objected to by the private respondents on account of the fact that several details were not mentioned in the seniority list. The seniority lists were

final seniority lists and it was incumbent on the respondents to file objections/appeals if they were aggrieved by the seniority lists issued by the Director of Technical Education.

22. We however, are of the view that in the facts and circumstances of the present case the entire seniority list, Ext.P29 was not required to be quashed. The learned Single Judge ought to have directed maintenance of seniority position of petitioners as per Exts.P6 to P10 treating their initial date of advice for reckoning seniority and direction would have been issued to revise the seniority as far as the petitioners of both the writ petitions are concerned. We thus are of the view that judgment of the learned Single Judge need to be modified.

Accordingly both the Writ Appeals are disposed of with the following directions:-

(i) Petitioners are entitled to claim seniority based on Exts.P6 to P10 (In W.P(C) No.4643 of 2010).

(ii) Exhibit P29 in W.P(C) No.4643 of 2010 and Ext.P12 in W.P(C) No.10475 of 2010 are modified to the extent that petitioners be assigned their seniority as per the date of advice by the Kerala Public Service Commission and accordingly modify the seniority list, Ext.P29 in W.P(C) No.4643 of 2010 and Ext.P12 in W.P(C) No.10475 of 2010.

(iii) The consequential order be issued by the Director of Technical Education within one month from the date of copy of this judgment is produced before him.

Parties shall bear their own costs.

ASHOK BHUSHAN, Ag. C.J.

A.M. SHAFFIQUE, JUDGE.