

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

**WRIT PETITIONS NOS.12296/2015 &
7227/2016**

**WITH
CIVIL APPLICATION NO.14191/2016**

WRIT PETITION NO.12296 OF 2015

1. Rajeshwar Shivappa Patil,
Age: 48 Years, Occ.: Service
as Sub-Divisional Engineer,
MJP, Sub-Division Ahmedpur,
Dist. Latur.
R/o 117, New Adarsha Colony, Latur.
2. Arvind Krishnarao Gandhi,
Age: 49 Years, Occ.: Service
as Sub-Divisional Engineer,
MJP, Sub-Division Udgir, Dist. Latur.
R/o B-2, MJP Office Quarters,
Near Jal Bhavan, Near Water Tank,
Barshi Road, Latur.
3. Gopinath Sadashivrao Deonikar,
Age: 51 Years, Occ.: Service
as Sub-Divisional Engineer,
MJP, Now posted on deputation at Rural
Water Supply Sub-Division Nilanga, ZP Latur.
R/o Pasaydan, Infront of Bajaj Show Room,
Shrinagar, Barshi Road, Latur- 413519.
4. Balaji Ramrao Pame,
Age: 54 Years, Occ.: Service
as Sub-Divisional Engineer,
MJP, Now posted on deputation at
Rural Water Supply Sub-Division Deoni,
Z.P., Latur, R/o Swami Samarth Nagar,
MIDC Road, Latur- 413512.

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5. Mukund Prataprao Patange,
Age: 46 Years, Occ.: Service
as Sub-Divisional Engineer,
MJP, Sub-Division Bhoom, Dist. Osmanabad.
R/o Plot NO. 87, Near Vidyaniketan School,
Biyani Nagar, Hingoli.
6. Somnath Ramkrishnarao Bhaganagare,
Age: 50 Years, Occ.: Service
as Sub-Divisional Engineer,
MJP, Sub-Division No. 2, Nanded.
R/o Tulshi Apartment, Flat No. 104,
Venktesh Nagar, Malegaon Road,
Taroda, Dist. Nanded.
7. Baliram Mansigrao Shinde,
Age: 46 Years, Occ.: Service
as Sub-Divisional Engineer,
MJP, Sub-Division Kandhar, Nanded.
R/o Madhav Nagar,
Purna Road, Nanded-431605
8. Gangadhar Shankarrao Yambadwar,
Age: 49 Years, Occ.: Service
as Sub-Divisional Engineer,
MJP, Now posted on deputation at
Rural water supply Sub-Division Kandhar,
Zilla Parishad, Nanded.
R/o 201, Hariom Appartment, Malegaon Road,
In front of city Bank, Taroda (kd), Dist. Nanded.
9. Shivanand Shivling Antad,
Age: 47 Years, Occ.: Service
as Sub-Divisional Engineer,
MJP, Now posted on deputation at
Rural water supply Sub-Division Patoda,
Zilla Parishad, Beed,
R/o Plot No. 34 Ashtwinayak Appartment,
Builders Housing Society, Nandwan Colony,
Aurangabad-431001
10. Vishnu Radhakisan Bade,
Age: 49 Years, Occ.: Service
as Sub-Divisional Engineer,

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MJP, Sub-Division Ambajogai, Dist. Beed.
R/o Shreenagar, Behind Prashant Nagar,
Ambajogai, Dist. Beed.

- 11 Kiran Narayanrao Patil,
Age: 45 Years, Occ.: Service
as Sub-Divisional Engineer,
MJP, Division Aurangabad.
R/o Row House No. 3, Plot No. 7-8-9,
Moreshwar Housing Society,
Garkheda Parishar, Aurangabad- 431009
- 12 Vijayendra Purushttom Phulambrikar,
Age: 48 Years, Occ.: Service
as Sub-Divisional Engineer,
MJP, Sub-Division No. 2, Aurangabad,
R/o Plot No. 3, Shashwat Vishwakarma
Housing Society, N-8, CIDCO, Aurangabad.
- 13 Sudhakar Malba Davkare,
Age: 50 Years, Occ.: Service
as Sub-Divisional Engineer,
MJP, Now posted on deputation at
Rural Water Supply Division Aurangabad,
ZP Aurangabad as Deputy Executive Engineer,
R/o 34, MHADA Colony, Darga Road,
Near Railway Gate, Sahanoorwadi,
Aurangabad-431005 .. Petitioners

Versus

- 1 Maharashtra Jeevan Pradhikaran,
Express Towers, 4th Floor,
Nariman Point, Mumbai 400 021,
Through its Member Secretary.
- 2 The Chief Engineer,
Maharashtra Jeevan Pradhikaran,
Aurangabad Region, Opp. Milind College,
Chhawani, Aurangabad
- 3 The State of Maharashtra,
Through the Principal Secretary,

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Water Supply & Sanitation Dept.,
G.T. Hospital Building, 7th Floor,
Opp. Small Cause Court,
Near Crawford Market, Mumbai.

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Respondents

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WRIT PETITION NO. 7227 OF 2016

1. Sumit S. Belpatre,
Age: 28 Years,
R/o Laxmi Narayan Niwas,
Plot No 45A/18B,
Near IMA Hall, Pandharpur,
Dist. Solapur-413 304
2. Prakash Bhagwat Khatal,
Age: 26 years,
R/o Dhandharphal Kd.,
Post Dhandharphal Bk.,
Tal. Sangamner, Dist. Ahmednagar
3. Prajakta Ashok Karanale,
Age: 24 Years
R/o At Post Wathar (Kiroli),
Tal. Koregaon, Dist. Satara
4. Ashok Rama Dhonge,
Age: 26 Years,
R/o At Post Shenit, Tal. Akole,
Dist. Ahmednagar
5. Rahul Laxmanrao Morghade,
Age: 29 Years,
R/o Plot No. 361, Shri Mahalaxmi Nagar,
Behind Besa Power House, Behind
Process Sabhagriha, Nagpur 440 034
6. Mohua S. Banerjee
Age: 29 years
R/o R-8, Laxmi Nagar, Nagpur
7. Sachin Ganeshrao Maske,
Age: 25 Years,

R/o Gite Niwas
Dwarkanagari, Shriramur Pusad,
Tal. Pusad, Dist. Yeotmal 445 215

- 8 Vijaykumar Dilip Waikar,
Age: 25 Years,
R/o Ayodhyanagari Agashivnagar,
Malkapur, Karad 415 002
- 9 Gaurav Pramod Chakke,
Age: 25 Years,
R/o Plot No. 19, Jivhala,
Omkar Society, Shahupuri,
Satara 415 002
- 10 Pallavi Parasharam Chougule,
Age: 25 Years,
R/o Kohinoor O/p to Military
Canteen Pagmala, Chiplun 415 605
- 11 Subodh Manohar More,
Age: 33 Years,
R/o Flat No. 11,
Wing-D, Landge, nestworth Sector
10, Spine Road, Opp. Spine Mall
PCNTDA, Pune 411 026
- 12 Dharmendra Chute,
Age: 33 Years,
R/o At Post Masal
Tal. Lakhandur, Dist. Bhandara 441 908
- 13 Krushna B. Avhad,
Age: 25 Years,
R/o Dodi Budruk, Tal. Sinner,
Dist. Nashik 422 606
- 14 Ganesh Shivaji Bhogawade,
Age: 31 Years,
R/o At Post Golegaon,
Tal. Shirur, Dist. Pune
- 15 Deepak hanmant Koli,
Age: 29 Years,

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R/o At Post Tung
Tal. Miraj, Dist. Sangli 416 301

- 16 Ajit Mohanrao Waghmare,
Age: 28 Years,
R/o PlotNo.7, Ramnagar Colony,
MIDC, Kodoli, Satara 415 004
- 17 Prafulla Ashokrao Vyawahare,
Age: 28 Years,
R/o At Shahapur, Post Old
Dhamangaon, Tal. Dhamangaon
Rly., Dist. Amravati 444 709
- 18 Amit Shivaji Patharwat,
Age: 27 Years,
R/o Hatur, Post Kanoli,
Tal. Ajara, Dist. Kolhapur
- 19 Ria Pradip Waghchaure,
Age: 25 Years,
R/o Bungalow No.4,
Shree Gajanan Gurudatta
Housing Society, Samarth Nagar
Nashik 422 005
- 20 Apurva V. Patil,
Age: 26 Years,
R/o At Post Kodoli,
Tal. Panhala, Dist. Kolhapur
- 21 Mayuri Ajit Patil,
Age: 27 Years,
R/o Plot No. 517, 5th Lane,
Shirol Road, Jaysingpur,
Tal. Shirol, Dist. Kolhapur
- 22 Arjun M. Gole,
Age: 24 Years,
R/o Gawadi Tal. Jawali,
Dist. Satara 416 012
- 23 Prashant Jaysing Patil,
Age: 25 Years, R/o Near Datta Mandir,

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Kapushked Naka,
Islampur, Dist. Sangli 416 409

24 Tanmay Ashok Kamble,
Age: 25 Years,
R/o A/8/1, Rajivnagar Khed,
Tal. Satara, Dist. Satara 415 003

25 Ajay Shivaji Palve,
Age: 36 Years,
R/o Flat No. 101, Building No. 17,
Ekta Building, Sai Nagar,
Panvel 410 206

26 Vijendra yashwant Shelke,
Age: Adult,
R/O 3, Uma Park Row Houses,
Sharad Pingle Nagar,
Meherdham Stop, Peth Road,
Panchavati, nashik 422 004

27 Uday Singh Patil,
Age: 25 Years,
R/o 9, Mahada Colony
Near Friends Colony
Katol Road, Nagpur 440 013

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Petitioners

Versus

1 Maharashtra Jeevan Pradhikaran,
Express Towers, 4th Floor,
Nariman Point, Mumbai 400 021,
Through its Member Secretary.

2 The Principal Secretary,
General Administrative Department,
Mantralaya, Mumbai.

3 The State of Maharashtra,
Through the Principal Secretary,
Water Supply & Sanitation Dept.,
G.T. Hospital Building, 7th Floor,
Opp. Small Cause Court,

Near Crawford Market, Mumbai.

4 Maharashtra Public Service Commission,
Having Office at 8th Floor, Cooperage
Telephone Exchange Bldg.,
Maharshi Karve, Mumbai .. Respondents

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S/Shri A.S. Deshpande and P.D. Suryawanshi, Advocates for
petitioners.

Smt.Vaishali Patil, AGP for the State.

S/Shri S.R. Barlinge and D.P. Bakshi, Advocates for
respondent nos.1 & 2.

Shri K.G. Patil, Advocate for applicant in CA 14191/2016.

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**CORAM: S.V. GANGAPURWALA &
K.L. WADANE, JJ.**

DATE: 02.12.2016

ORAL JUDGMENT (Per S.V. Gangapurwala, J.) :

1] The petitioners in Writ Petition No.12296/2015
are graduate Civil Engineers. They were appointed as
Assistant Engineer Grade-II with respondent no.1. During
the period 2004 to 2009, these petitioners were promoted
as Sub-Divisional Engineer by the respondent no.1 on ad-
hoc basis. The advertisement is issued by the respondent
no.1 through Maharashtra Public Service Commission for
filling in the posts of Sub Divisional Engineers
(Assistant Engineer Grade-I and Assistant Executive

Engineer) by nomination. Pursuant to the said advertisement, 36 candidates are selected. Some of such selected candidates pursuant to the selection process have filed Writ Petition No.7227/2016 wherein directions are sought for issuance of appointment orders.

2] The petitioners in Writ Petition No.12296/2015 challenged the seniority list of the Sub-Divisional Engineer cadre dated 24.9.2015 on the ground that their names stand deleted from the seniority list and fearing adverse action being taken, probably of reversion pursuant to the provisional seniority list, have sought directions restraining the respondents from taking any adverse action pursuant to the seniority list.

3] Shri A.S. Deshpande, learned counsel for the petitioners strenuously contends that the respondent no.1 is established with effect from 1.1.1977. As per the decision dated 21.1.1984, the provisions of the Maharashtra Civil Services Rules were made applicable to the employees of the respondent no.1. On or about 8.2.1999, the recruitment rules applicable to the Water Resource Department were made applicable to the respondent no.1 and on and from 16.6.1997, the rules of

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recruitment applicable to the Irrigation Department were made applicable to the respondent no.1. The learned counsel submits that the said rules do not provide for any ratio for the appointment of Sub Divisional Engineers by promotion and/or nomination. The learned counsel submits that under the Government resolution dated 19.12.1970, the ratio is laid down with regard to the appointment of Sub Divisional Engineers by nomination and promotion. The learned counsel submits that though the said Government resolution laid down the ratio to be maintained for appointment of Sub Divisional Engineers by nomination and promotion, the respondent no.1 at no material point of time adhered to the said ratio. The said Government resolution dated 19.12.1970 has become obsolete because of the changing scenario. Because of the mushrooming of the private engineering colleges, more graduate engineers would be available. With these increased number of graduate engineers, the scenario would change.

4] The learned counsel further submits that for last 30 years, the quota rule was never applied nor it was ever adopted. The petitioners are promoted during

the period 2004 to 2009 and are officiating the post of Sub Divisional Engineers for 12 to 13 years. The settled position cannot be allowed to be unsettled after such a long gap. When the respondents have not adhered to the said quota prescribed under the Government resolution of 1970, the respondents now cannot be allowed to turn around after a hiatus of 30 years and claim to adhere to the quota as per the resolution of 1970.

5] The learned counsel further submits that all these petitioners were working in the feeder cadre and were eligible to be promoted as Sub Divisional Engineers. Though the promotion orders state that their promotion is ad hoc and temporary, still they are working for more than 12 to 13 years and it would be inappropriate, inequitable to unsettle them. The learned counsel, relying on the judgment of the Apex Court in a case of *The Direct Recruit Class-II Engineering Officers' Association & others v. State of Maharashtra & others* reported in **AIR 1990 SC 1607** submits that where the quota rule has broken down and the appointments are made from one source in excess of the quota, the appointee should not be pushed down. If a quota rule is prescribed by

executive instructions and is not followed continuously for number of years, the inference is that the executive instructions have ceased to remain operative. According to the learned counsel, in the present case also, the quota was prescribed by executive instructions. The same is not followed continuously for number of years. The only irresistible conclusion that can be drawn is that the said executive instructions have ceased to be operative.

6] The learned counsel submits that the fact that the quota rule, which was made applicable as per the executive instructions of the year 1970, were never followed is writ large from the advertisement issued by the respondent no.1 so also the requisition made by the respondent no.1 from time to time. At no material point of time, the respondent no. issued any advertisement or went ahead with the selection process for the total number of vacancies, which were meant to be filled in by nomination to the post of Sub Divisional Engineers. The advertisement issued for filling in the post of Sub Divisional Engineer by nomination was never more than 10% of the vacant posts to be filled in by nomination as per

the general instructions. The learned counsel submits that the instructions of the year 1970 were followed more in breach.

7] Shri Deshpande, the learned counsel, further submits that the Apex Court has held that when the rules permit the authorities to relax the conditions relating to the quota, a presumption would arise that there was some relaxation when there was deviation from the quota rule. The learned counsel submits that even under the executive instructions dated 19.12.1970, a provision is made to review the quota after three years and as the post of Sub Divisional Engineer was never filled in by nomination and that the said quota rule was not followed, it will have to be presumed that the said quota fixed under the Government resolution has been relaxed and changed.

8] Shri S.R. Barlinge, learned counsel for the respondent no.1, submits that the respondent no.1 at no material point of time ever deviated from the quota laid down as per the resolution of the year 1970. The petitioners herein were promoted to the posts of Sub Divisional Engineers on temporary ad-hoc basis

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considering the exigency of the situation. Sub-clause (2) of Clause 5 of the order of promotion explicitly makes it clear that the petitioners' promotions are on ad-hoc basis and against the posts which are to be filled in by nomination and they would not have any right on the post of Sub Divisional Engineer and as and when the candidates would be available by nomination pursuant to selection process, the junior most persons from the lot promoted on ad-hoc basis will have to be reverted back. The petitioners accepted the promotion order with clear understanding, now cannot stake their right. The petitioners do not have any vested right on the said posts. A person who is appointed / promoted on ad hoc basis cannot claim any right to the said post.

9] The learned counsel for the respondent no.1 relies on the judgment of the Apex Court in a case of *Keshav Chandra Joshi v. Union of India* reported in **1992 (Supp.1) SCC 272**. The learned counsel further submits that even if the promotees continue for a long time after being promoted on ad-hoc basis, still that would not give them any right. To substantiate the said contention, the learned relies on the judgment of the Apex Court in a

case of *Maharashtra Vikrikar Karmchari Sangathan v. State of Maharashtra & another* reported in **(2000) 2 SCC 552**.

The learned counsel submits that in the year 2012, requisition was made for filling in 90 posts of Sub Divisional Engineers but the MPSC had only recommended 36 candidates for the post of Sub Divisional Engineer. According to the learned counsel, the persons who are selected for being appointed by nomination to the post of Sub Divisional Engineer are required to be considered for appointment from the quota meant to be filled in by nomination.

10] The learned counsel for the petitioners in Writ Petition No.7227/2016 states that it is more than one year, the petitioners therein are selected, however, appointment orders are not being issued by the respondent no.1. The respondent no.1 is required to be directed to issue the appointment orders.

11] Mr.K.G. Patil, learned counsel for the intervenor in Writ Petition No.12296/2015 states that there is inaction on the part of the respondent no.1 to fill in the vacant posts of Sub Divisional Engineers from Sectional Engineer's category. There are 15 posts vacant

from the said quota. The respondent no.1 is not making any attempt to fill in the said posts.

12] We have considered the submissions canvassed by the learned counsel for the respective parties.

13] It is trite that promotion and/or seniority is not a fundamental right. The Apex Court in a case of the Direct Recruit, referred to supra, has observed that if there are no statutory rules governing the field with regard to the quota meant for nomination and promotion, then the same can be fixed by executive instructions. In absence of Rules, executive order can fill up the gap. In the present case, the recruitment rules which are made applicable to the respondent no.1 do not provide for any quota for the post of Sub Divisional Engineer to be filled in from nomination and promotion. The executive instructions pursuant to the Government resolution dated 19.12.1970 prescribe the quota. The same are as under:-

"C) The permanent posts in Class II remaining in balance after setting the posts for the cadre of Deputy Engineer and all the temporary posts existing at any time in Class-II shall be distributed in the three cadres in the following:-

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		<u>Permanent Posts</u>	<u>Temporary Posts</u>
2	Assistant Engineer Class-II	34%	NIL
3	Sub-Divisional Engineers.	33%	50%
4	Sub-Divisional Officers	33%	50%

d) The proportions of the three cadres in the distribution of permanent and temporary posts in Class-II shown in rule 2 C will be in force for three years and will be reviewed thereafter."

14] Upon perusal of the facts on record, it transpires that the petitioners are appointed as Assistant Engineers Grade-II and the next promotion to the petitioners would be in the cadre of Sub-Divisional Engineers. The respondent no.1 has 241 sanctioned posts of Sub-Divisional Engineers. From these 241 sanctioned posts, 34% posts are to be filled in through MPSC i.e. by nomination. 33% of these 241 sanctioned posts (i.e. 80 posts) of Sub-Divisional Engineers are to be filled in by giving promotion to the Assistant Engineers Grade-II to which cadre the petitioners belong and remaining 33% posts (i.e. 79 posts) are to be filled in by giving promotion to the Sectional Engineers working with the respondent no.1. 80 promotional posts of Sub-Divisional Engineers from the feeder cadre of Assistant Engineers

Grade-II, to which the petitioners belong, are completely filled in. However, out of quota of 82 posts, reserved to be filled in by direct nomination through MPSC, is not completely filled in and 80 posts from said quota are yet to be filled in through candidates from MPSC. These petitioners belonging to the cadre of Assistant Engineer Grade-II were given ad-hoc promotion to the posts of Sub-Divisional Engineers against the quota reserved for MPSC candidates and this fact was clearly mentioned in the ad-hoc promotion order. The said promotion order also states that as and when the candidates are made available for appointment by nomination through MPSC, the ad-hoc promotees like the petitioners shall be reverted to the original posts i.e. Assistant Engineers Grade-II.

15] The bone of contention of the petitioners is that the said quota was never adhered to and the posts of Sub Divisional Engineers to be filled in by nomination were never filled in to its optimum. The vacancies of almost 82 posts existed, however, every time, the advertisement was issued for negligible number of posts to be filled in by nomination and on that basis, it is stated that the said quota which was fixed by the

executive instructions has been deviated from.

16] As per the executive instructions of the year 1970, appointment to the posts of Sub-Divisional Engineers is to be made from three sources i.e. by nomination, by promotion of the persons from the post of Assistant Engineer Grade-II and by promotion from the persons holding the posts of Sectional Engineers.

Where the appointments are made from more than one source, it is permissible to fix the ratio for recruitment from different sources and if the Rules or the executive instructions provide for the ratio or quota, the same has to be followed strictly and deviation therefrom is not permissible. The executive instructions laying down the quota holding the field have been adhered to by the respondent no.1.

17] The arguments of the learned counsel for the petitioners could have been accepted had any regular promotions been made on the posts to be filled in by nomination or there was some interchange of filling into the post of Sub Divisional Engineer by promotion from the feeder cadre i.e. either from Sectional Engineers or Assistant Engineers Grade-II. However, as we have

observed above, regular promotions were never made at any point of time deviating from the quota laid down under the executive instructions of 1970.

18] The Apex Court in a case of *The Direct Recruit*, referred to supra, has laid down following principles :-

"(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.

(C) When appointments are made from more than one source, it is permissible to fix the ratio for recruitment from the different sources, and if rules are framed in this regard they must ordinarily be followed strictly.

(D) If it becomes impossible to adhere to the existing quota rule, it should be substituted by

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an appropriate rule to meet the needs of the situation. In case, however, the quota rule is not followed continuously for a number of years because it was impossible to do so the inference is irresistible that the quota rule had broken down.

(E) Where the quota rule has broken down and the appointments are made from one source in excess of the quota, but are made after following the procedure prescribed by the rules for the appointment, the appointees should not be pushed down below the appointees from the other source inducted in the service at a later date.

(F) Where the rules permit the authorities to relax the provisions relating to the quota, ordinarily a presumption should be raised that there was such relaxation when there is a deviation from the quota rule.

(G) The quota for recruitment from the different sources may be prescribed by executive instructions, if the rules are silent on the subject.

(H) If the quota rule is prescribed by an executive instruction, and is not followed continuously for a number of years, the inference is that the executive instruction has ceased to remain operative."

It has been laid down in the said authoritative

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decision that once an incumbent is appointed to a post according to rules, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that when the initial appointment is only ad-hoc and not according to rules and made as a stop gap arrangement, the officiation in such post cannot be taken into account for considering the seniority. The Apex Court has also held that where the quota rule has broken down and the appointments are made from one source in excess of the quota, but are made after following the procedure prescribed by the rules for appointment, the appointee should not be pushed down below the appointees from the other source inducted in the service at later stage.

19] We had asked the learned counsel for the respective parties as to whether the quota that was prescribed for the persons to be promoted as Sub Divisional Engineers from the cadre of Sectional Engineers and Assistant Engineer Grade-II were given regular promotion in excess of their quota, the learned counsel replied in the negative. It is stated that the regular promotions from the respective quota were never

made in excess; so also no promotions are made on regular basis for the post to be filled in by nomination.

20] Only on the ground that number of posts vacant to be filled in by nomination were never advertised to its optimum may not be sufficient to come to conclusion that the quota rule has been broken down or that there is any deviation from the quota fixed by the executive instructions. There is no material on record to indicate that quota rule was broken down.

21] Even in case of *Dr.Surinder Singh Jamwal & another v. State of J & K & others* reported in (1996) 9 SCC 619, it was held that the ad-hoc employees though were working for more than 13 years could not be granted regularization and their services were protected till the appointment of selected candidates.

22] Generally, once an appointment is made to a post according to the rules, the seniority has to be counted from the date of his appointment. However, when initial appointment is only ad-hoc and as a stop gap arrangement, the period of officiation on such post cannot be taken into account for reckoning seniority. The petitioners admittedly are appointed on ad-hoc basis as a stop gap

arrangement and till the regular recruits are appointed according to the rules. Continuous length of ad-hoc service from the date of initial appointment cannot be counted towards seniority.

23] Only because the petitioners are officiating for some length of period as Sub Divisional Engineers on ad-hoc basis upon the orders of promotion will not be sufficient to invest them with vested right. The orders of promotion explicitly state that their promotion is made on ad-hoc basis and on the post meant to be filled in by nomination and further that when the post would be filled in by nomination, the persons who are junior in the said list of persons who are promoted ad-hoc will have to be reverted back.

24] If the statutory rules or the valid executive instructions would not have been holding the field, then the case of the persons who are officiating the posts for quite a length of time could be considered. Only in absence of rules or executive instructions, the Court may evolve fair and just principle to be applied commensurate with the facts of the case. However, in the wake of the executive instructions holding the field and that the

quota laid down under the said executive instructions was never deviated at any material point of time so also the order of ad-hoc promotions clearly and unambiguously states that these promotions are ad-hoc and are made on the post meant to be filled in by nomination and further that, when candidates by nomination would be available, said persons would be reverted. Hence, it would not be possible to consider the case of the petitioners.

25] The promotion of the petitioners being ad-hoc and in the quota to be filled in by nomination through MPSC, they cannot claim seniority on the basis of their officiating service. Seniority has to be fixed strictly in accordance with the quota provided in the executive instructions of 1970. Clause 40 of the executive instructions dated 19.12.1970 also explicitly state that all officiating promotions made in excess of the fixed proportions or in contravention of the fixed minimum requirements of service shall be treated as fortuitous and the service rendered in that capacity shall not be counted for seniority. The case of the petitioners is hit by said Clause 40 of the general instructions also.

26] In view of the specific instructions holding the

field, the case of the petitioners in Writ Petition No.12296/2015 cannot be considered on equity. Hence, the said writ petition is dismissed.

27] As far as Writ Petition No.7227/2016 is concerned, it is for the respondent no.1 to issue them the appointment orders and the respondent no.1 has not denied to issue the appointment orders to them. According to the learned counsel for the respondent no.1, it is because of the interim orders passed in Writ Petition No.12296/2015, the appointment orders could not be issued to the petitioners of Writ Petition No.7227/2016. Writ Petition No.7227/2016 is accordingly disposed of.

28] Shri A.S. Deshpande, learned counsel for the petitioners, seeks continuation of interim orders for further period of six weeks. Shri S.R. Barlinge, learned counsel for the respondent no.1, opposes the said request. However, considering the fact that the interim orders are operating almost for one year, we extend the same for a period of six weeks. Needless to state, on the lapse of six weeks, the interim protection granted by this Court shall come to an end.

29] In view of disposal of Writ Petition No.12296/2015, Civil Application No.14191/2016 filed by Dinesh Maganlal Shah & another for intervention also stands disposed of.

(K.L. WADANE, J.)

(S.V. GANGAPURWALA, J.)