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HIGH COURT OF CHHATTISGARH, BILASPUR

WPS No. 748 of 2005

Mahesh Giri S/o Shri S.R. Giri, aged 37 years, Assistant Engineer, Sub Divisional Officer, Department of Water Resources Balod, District-Durg (MP)

---- Petitioner

Versus

1. The State of Madhya Pradesh through the Secretary, Department of Irrigation, Vallabh Bhawan Bhopal (MP)
2. The Chief Engineer, Department of Water Resources, Bhopal (MP)

---- Respondents

And

WPS No. 874 Of 2005

Omprakash Singh, aged about 42 years, S/o Shri L.P. Singh, By occupation- Assistant Engineer (design) working in the office of Executive Engineer, Water Resources Department, Mahanadi Project canal Division No.1, Rudri, Dhmtari, District- Raipur (MP)

---- Petitioner

Vs

1. The State of Madhya Pradesh through the Secretary, Govt. of MP Water Resources Department, Vallabh Bhawan, Bhopal
2. The Engineer-in-Chief, Water Resources Department, Govt. of Madhya Pradesh, Bhopal

---- Respondents

And

WPS No. 2299 Of 2012

1. Ram Pratap Agrawal, S/o Late Shri Gopi Ram Agrawal, aged about 57 years, Sub Divisional Officer, Water Resources, Sub Division, Ambikapur, District- Surguja (CG)
2. Balkrishna Pandey, S/o Late Shri Tek Ram Pandey, Aged About 59 Years, Assistant Engineer At Office Of The Chief Engineer, Hasdeo Basin, Bilaspur, District-Bilaspur (C.G.)

---- Petitioner

Vs

1. State Of Chhattisgarh through- The Principal Secretary, Water Resources Department, Mantralaya, DKS Bhawan, Raipur, District-Raipur (CG)
2. The Engineer In Chief, Water Resources Department, Sihawa Bhawan, Raipur, Distt. Raipur (C.G.)

---- Respondents

And

WPS No. 5746 Of 2011

Subhodh Kumar Nema S/o Late Madan Mohan Nema, aged about 52 years, SDO, Water Resources Sub Division, Nandeli, District Raigarh (CG)

---- Petitioner

Vs

1. State Of Chhattisgarh through- The Principal Secretary, Water Resources Department, Mantralaya, DKS Bhawan, Raipur, District-Raipur (CG)
2. The Engineer In Chief, Water Resources Department, Sihawa Bhawan, Raipur, Distt. Raipur (C.G.)

---- Respondents

And

WPS No. 6222 Of 2011

Shatrughan Lal Yadav S/o Teejram Yadav, aged about 52 years, Sub Divisional Officer Water Resources Sub Division Champa Distt. Janjgir Champa CG

---- Petitioner

1. State Of Chhattisgarh through- The Principal Secretary, Water Resources Department, Mantralaya, DKS Bhawan, Raipur, District-Raipur (CG)
2. The Engineer In Chief, Water Resources Department, Sihawa Bhawan, Raipur, Distt. Raipur (C.G.)

---- Respondents

And

WPS No. 6603 Of 2011

1. Ramesh Kumar Pandey, S/o Late Shri Lakhan Lal Pandey, aged about 57

years, Assistant Engineer (Civil) presently posted as Office of Chief Engineer Mahanadi Project, Raipur District Raipur (CG)

2. Bramha Nan Soni S/o Late Shri Chhote Lal Soni, aged about 55 years, Assistant Engineer (Civil) Presently Posted As Sub Divisional Officer, Water Management, Sub Division No. 10, Dudhawa, Distt.- Kanker (C.G.)
3. Arvind Kumar Namdeo S/o Late Shri Genda Lal Namdeo, aged about 53 years Assistant Engineer (Civil) Presently Posted At Office Of Engineer In Chief Water Resources Department, Raipur (C.G.)
4. Vinayak Rao Bhure S/o Late P.R. Bhure, aged about 53 years, Assistant Engineer (Civil) Presently Posted At Mantralaya Water Resources Department, Raipur (C.G.)
5. Rajeev Kumar Khanna S/o Shri T.C. Khanna , aged about 51 years, Assistant Engineer (Civil) Presently Posted As Sub Divisional Officer, Water Resources Sub Division Basna, Distt.- Mahasamund (C.G.)
6. Dilip Kumar Thakur S/o Late Shri R.R. Thakur, aged about 55 years, Assistant Engineer (Civil) Presently Posted As In-Charge Executive Engineer In The Office Of The Chief Technician Examiner (Vigilance) Chhattisgarh, Distt.- Raipur (C.G.)
7. Suresh Chandra Jain S/o Shri Ram Bakhas Jain , aged about 56 years, Assistant Engineer (Civil) Presently Working As Assistant Engineer Water Resources Division, Rajnandgaon, Distt.- Rajnandgaon (C.G.)
8. Ashit Kumar Bhatnagar S/o Late Shri Surendra Nath Bhatnagar, Assistant Engineer (Civil) Present Posted As Executive Engineer Municipal Corporation, Raipur, Distt.- Raipur (C.G.)

---- Petitioners

Vs

1. State Of Chhattisgarh through- The Principal Secretary, Water Resources Department, Mantralaya, DKS Bhawan, Raipur, District-Raipur (CG)
2. The Engineer In Chief, Water Resources Department, Sihawa Bhawan, Raipur, Distt. Raipur (C.G.)

---- Respondents

And

WPS No. 2772 Of 2012

Chhote Lal Singh S/o Shri Babdin Singh Aged About 53 Years, SDO Water Resources, Sub Division No III, Ambikapur, Distt Surguja

---- Petitioner

Vs

1. State Of Chhattisgarh through- The Principal Secretary, Water Resources Department, Mantralaya, DKS Bhawan, Raipur, District-Raipur (CG)
2. The Engineer In Chief, Water Resources Department, Sihawa Bhawan, Raipur, Distt. Raipur (C.G.)

---- Respondents

And

WPS No. 3877 Of 2012

1. Virendra Singh S/o Late Shri Sheo Murat Singh Aged About 58 Years Posted As Assistant Engineer, Office Of Sub-Divisional Officer, Water Resources Sub-Division No. 2, Raipur C.G.
2. Saket Parmar S/o Lt. Devram Parmar Aged About 52 Years Posted As Assi. Eng. Office Of Sub-Divisional Office, Water Resources Sub-Division No. 2 Raipur C.G.
3. Shashikant Dani S/o Lt. Dr. Dharam Kumar Aged About 54 Years Working As Executive Engineer Office Of Chief Executive, Mrp Establishment Wrd, Raipur C.G.
4. Satish Kumar Jadhav S/O Late Shri RD Jadhav, aged about 52 years, posted as Incharge Executive Engineer, Project Implementation Unit No.1, Chhattisgarh Gramin Sadak Vikas Abhikaran, Raipur (CG)
5. K.C.Reddy S/o Lt. K.S.Reddy Aged About 57 Years Assistant Engineer, At Office Of Engineer In Chief, Wrd, Raipur.Cg
6. Vimal Kumar Pandey Aged About 56 Years Assistant Engineer, Office Of Superintending Engineer, Water Resources & Ground Water Circle, Sihawa Bhawan, Civil Lines, Raipur, Cg
7. H.K.Shrivastava S/o Lt R.P.Shrivastava, aged about 54 years, posted as Executive Engineer In Municipal Corporation, Durg, Cg
8. A.K.Tiwari S/o Lt. R.P.Tiwari aged about 54 years Asstt. Engineer In Office Of Chief Engineer, Hasdeo Basin, Bilaspur, Cg
9. Ramesh Kumar Pandey S/o Lt Lakhan Lal Pandey, aged about 58 years, Asstt Engineer In Office Of Chief Engineer Mrp, Raipur, Cg

---- Petitioners

Vs

1. State Of Chhattisgarh Through- The Secretary, Irrigation Deptt. D.K.S. Bhawan, Mantralaya Distt. Raipur (C.G.)

2. C.G. State Public Service Commission Through the Secretary, Shankar Nagar, Raipur, Cg
3. Pt. Ravishankar University Through The Registrar, University Campus, Raipur, Cg
4. The State Of M.P. Through The Secretary, Irrigation Deptt, Vallabh Bhawan, Bhopal, Mp
5. Rakesh Kumar Nagariya Asstt. Engineer, Water Resources Deptt, Through Engineer-In-Chief, Water Resources Deptt, Sihawa, Bhawan, Raipur, Cg
6. Sushil Kumar Sharma, Asstt. Engineer, Water Resources Department through the Engineer-in-Chief, Water Resources Department, Sihawa Bhawan, Raipur (CG)
7. Santosh Kumar Agrawal Asstt. Engineer, Water Resources Deptt, Through Engineer In Chief, Water Resources Deptt, Sihawa Bhawan, Raipur, Cg
8. Suresh Chandra Agrawal Assistant Engineer, Water Resources, Deptt, Through Engineer-In-Chief, Water Resources Deptt, Sihawa Bhawan, Raipur, Cg
9. Santosh Kumar Agrawal Assistant Engineer Water Resources Deptt. Thruh The Engineer In Chief, Water Resources Deptt, Sihawa Bhawan, Raipur, Cg

----- Respondents

For Respective Petitioners :	Shri B.P. Singh with Shri Akhilesh Kumar Shri Prateek Sharma and Shri A.S. Rajput, Advocates
For State :	Shri D.R. Minj, Dy. Govt. Advocate

S.B. Hon'ble Shri Justice Manindra Mohan Shrivastava

Order On Board

15/02/2017

Heard.

1. This order shall govern disposal of the aforesaid petitions as common issue arises for consideration.
2. For the sake of convenience and clarity, the facts pleaded and the documents contained in the earliest petition filed by Mr. Mahesh Giri in WPS No.748 of 2005 shall be dealt with for arriving at decision on the legal issue commonly involved in all the cases.

3. An emergency situation arose due to large number of vacancies of Assistant Engineers in the Department of Irrigation (Water Resources) in the then State of Madhya Pradesh, which led the authority to make appointment on emergency basis. An advertisement was issued by the Engineer-in-Chief of the Irrigation Department, Bhopal on 10.7.1979 inviting applications for selection and appointment on the post of Assistant Engineer on ad-hoc basis. The advertisement in Clause-10 stipulated that appointment will be on ad-hoc basis for a period of six months in the first instance which may be extended from time to time, if found necessary, by the Govt. The candidates were required to pass a written test/interview to be held by the P.S.C. on a later date for being appointed in regular cadre service. It was clearly stipulated that candidates who fail to make a qualifying grade in the aforesaid test and interview will be terminated without assigning any reason. Further, it was made clear that the candidates will have no claim whatsoever for appointment/absorption in regular cadre only because of they having been appointed on ad hoc basis. Pursuant to this advertisement, petitioner-Mahesh Giri and other petitioners in the connected petitions applied. They were selected by a Selection Committee constituted by respondent-authority and were provided appointment as Assistant Engineer on a time scale of pay, though on ad-hoc basis. The order of appointment of petitioner -Mahesh has been filed along with the petition as Annexure A-1 which was passed on 11.1.1980. Similar orders of appointment of respective petitioners in other cases have also been filed. In all these orders, appointment were made on ad-hoc basis, though in a time scale of pay.
4. The ad-hoc appointment of the petitioners continued and in the year 1986, the Govt. framed Regularization Rules in exercise of powers under Article 309 of the Constitution of India, known as Madhya Pradesh Regularization of Ad-hoc Appointment Rules, 1986 (hereinafter referred to as "*the Rules of 1986*"). These Rules contemplated scrutiny of cases of ad-hoc employees appointed to the post in the departments specified in the Schedule appended to the Rules and upon being found fit, subject to they being possessed of the statutory qualifications and availability of the vacancies for regularization in service, the cases of the petitioners were considered by the Scrutiny Committee and the petitioners having been found fit for regularization, were finally regularized in service. Petitioner -Mahesh has placed the order of his regular appointment dated 14.5.1987 as Annexure A-3. Similar orders of other petitioners have also

been placed on record in respective cases. The Regularization Rules of 1986, under which these petitioners were regularized, contained specific provision governing their seniority by providing in Rule 12 thereof that the seniority shall be granted from the date of regularization.

5. One of the petitioners Mahesh Giri started raising his claim for grant of regular appointment from the date he was granted ah-hoc appointment, which led to filing of petition by him before the State Administrative Tribunal in the year 1993. While that petition remained pending, the Tribunal was abolished and the case was transferred to this Court. In the petition, earlier an order was passed by this Court on 12th September, 2011 by which the petition was allowed holding that as the petitioner was appointed on ad-hoc basis according to Rules through proper selection and continued till he was confirmed or made regular, therefore, his seniority has to be counted from the date of his appointment on ad-hoc basis and not from the date of confirmation/regularization. Against this order, the State preferred a writ appeal. In the said writ appeal, some of the petitioners of the connected petitions sought to intervene in support of the cause of writ petitioner-Mahesh. In the writ appeal, an order was passed on 30.4.2012 allowing the appeal, setting aside the order passed earlier and remanding the case to the Writ Court for deciding the writ petitions afresh on merits after taking into account the additional documents filed by the parties in appeal. While passing the order, it was further observed that as the case is being remanded for *de novo* hearing on merits, parties would be at liberty to amend their pleadings and file all such relevant documents which they may wish to file in support of their pleadings with a further direction for decision of the case by the Writ Court in accordance with law after taking into consideration the entire pleadings including the amended one, if any, and documents filed. Thereafter, separate writ petitions were filed by other petitioners which are being analogously heard along with this case. Another case of one Om Prakash Singh, who had also filed an Original Application before the Tribunal which remained pending and finally transferred to this Court upon abolition of the Tribunal, is also being analogously heard with this batch of petitions as he is also a similarly situated Assistant Engineer appointed on ad hoc basis and thereafter regularized under the Regularization Rules of 1986.
6. Learned counsel for the petitioners argued in extenso and contended that the petitioners were appointed according to Rules by following the procedure for

selection upon due advertisement and invitation of applications from the candidates possessed of qualifications prescribed for the post of Assistant Engineer. It is contended that the petitioners are not back-door appointees. The department was in need of manning Assistant Engineer and it issued advertisement to make appointment in the name of emergency appointment, but it was in accordance with the constitutional mandate of Article 14 & 16 of the Constitution of India inasmuch as applications were invited through open advertisement. The petitioners were duly possessed of the statutory qualifications. They were duly selected by a Committee constituted by the respondent and then appointed. Even though there was a stipulation that the petitioners will have to clear Public Service examinations to attain regular status, later on, the respondents themselves took a policy decision to regularize their services under Regularization Rules 1986. The petitioners' case were duly scrutinized and as their service records were found to be satisfactory, they having been possessed of statutory qualifications and vacancy being available right from the date of their initial appointment as ad-hoc appointee, they ought to be provided regular appointment from the initial date of ad-hoc appointment. Taking their arguments further, it is contended that though initially, Rule 12 of the Rules of 1986 provided that seniority would be granted only from the date of regularization, in view of subsequent decision of the Supreme Court in the case of **Direct Recruit Class- II Engineering Officer's Association Vs. State of Maharashtra and Ors** (1990) 2 SCC 715 and subsequent amendment in the Madhya Pradesh Civil Services (General Condition of Service) Rules, 1961, providing for grant of seniority from the initial date of ad-hoc appointment, upon regularization, the petitioners are entitled to seniority from the initial date of appointment without pressing into service the rigor of Rule 12 of the Rules of 1986. Learned counsel for the petitioners further argues that in fact, the provision contained in Rule 7 of the Rule of 1986, on its rational construction, should be understood to mean that it only intended to confer seniority from the initial date of appointment and it cannot be read to apply in a limited manner for the purposes of *inter se* seniority only. Further contention of learned counsel for the petitioners is that the High Court of Madhya Pradesh in the matter of Assistant Professors in the case of **Pramod Kumar Khare v. State of M.P.** (Miscellaneous Petition No.1866/1985) had considered similar issue regarding their entitlement to get higher pay scale. On facts, the case of the petitioners herein is in parity with those Assistant Professor who were also appointed on

emergency basis but later on granted regular appointment. In their cases, it was held that they are entitled to count their services from the initial date of appointment as regular services for the purpose of grant of regular pay-scale. The Govt. filed SLP before the Supreme Court but the same was dismissed. Therefore, the petitioners are also entitled to grant of seniority from the initial date of ad-hoc appointment. It was lastly submitted that in the case of one V.K. Jain another Engineer of the Panchayat Department, the Govt. interpreted Rule 7 and Rule 12 of the Rules of 1986 to hold that an ad-hoc appointee, upon regularization, is entitled to seniority from the initial date of appointment which is reflected from concerned document filed by the petitioner Mahesh Giri along with an application for taking document on record.

In WPS No.3877 of 2012, an additional submission has also been made by learned counsel for the petitioner that respondents No.5 to 9 who were selected by the PSC and appointed in the year 1982 on regular basis are not possessed of mandatory eligibility qualifications of being possessed of experience of permanent training of one year.

In support of their submissions, learned counsel for the petitioners placed reliance in the cases of **R. Chopra & Ors. Vs. State of M.P. & Ors.** (Civil Appeal No.3971 of 1994) decided on 6th November, 1996 and **State of Madhya Pradesh & Ors. Vs. Satyavrata Tanan** (Civil Appeal No.10554 of 2011) decided on 1st December, 2011.

7. Per contra, learned counsel for the State submits that the issue raised in this petition has been considered by the Division Bench of the High Court of Madhya Pradesh in the case of **State of Madhya Pradesh Vs. Dashrath Singh** (W.P. No.7176 of 2002) decided on 2.2.2006, wherein it has already been held that the Assistant Engineer appointed on ad-hoc basis and later on regularized under the Rules of 1986 are entitled to seniority only from the date of regularization as per provision contained in Rule 12 of the Rules of 1986. He submits that the petitioners had proceeded to apply for ad-hoc appointment with open eyes to various conditions of ad-hoc appointment including Clause 10 of the advertisement (Annexure R-1), which clearly stipulated that the ad-hoc appointees appointed by the process of selection shall have no claim for regular appointment and status unless they get selected through the PSC as per the relevant recruitment Rules. He next submits that the appointment of the

petitioners was not in accordance with Rules because under the Rules, selection were to be made by the PSC and the appointments were to be made only in consultation with the PSC, whereas in the present case, looking to the emergency situation, the advertisement was issued by the Engineer-in-Chief and thereafter, the order was passed by the State Govt. According to him, though the procedure of selection was followed by inviting applications through advertisement, yet it cannot be said to be in accordance with the Rules. The next submission of learned counsel for the State is that, in fact, large number of appointments were made on ad-hoc basis with the condition that those ad-hoc appointees will have to face PSC examinations to attain regular status. The Govt. found that large number of such ad-hoc appointees either did not appear or failed to get selected through PSC even after an attempt. In this background, which prevailed in respect of large number of ad-hoc appointees in various departments appointed on ad-hoc basis from time to time, a policy decision was taken to regularize their services through a process of scrutiny subject to condition that they are possessed of statutory qualifications and their service records are satisfactory. In this background, as one time measure, Regularization Rules 1986 were framed. As the benefits of regularization was to be given to those who did not clear PSC, it was decided to grant them seniority only from the date of regularization. He submits that the petitioners having accepted their order of regularization, knowing fully well about the rule of seniority engrafted in the Rules of 1986, could not turn around to claim seniority from an earlier date particularly when the validity of the Rule is not under challenge. It is also submitted that the issue with regard to grant of seniority stood settled on the date of passing of the order of their regularization way back in the year 1987 by operation of Rule 12 of the Rules of 1986. Therefore, any subsequent amendment in the Rules of General Conditions of Service in the year 1998 would not operate to undo the effect of Rule 12 applicable to the class of ad-hoc employee benefited by regularization under the Rules of 1986. He also submits that judgment of the Madhya Pradesh High Court in the case of **Dashrath Singh** (supra) is a judgment-in-rem because that was also a case of Assistant Engineer similarly situated as the petitioners, in the Department of Irrigation itself. That judgment also applies to those Assistant Engineers who have been allocated to the State of Chhattisgarh which also includes the petitioners herein. The said decision operates in respect of the Assistant Engineer of Irrigation Department who were considered, appointed on

ad-hoc basis and thereafter regularized under the Rules of 1986. SLP against the order of High Court of Madhya Pradesh was dismissed by the Supreme Court, therefore, issue in this Court is now concluded and cannot be agitated again at the instance of similarly situated engineers of the same Department. In support of his submission, learned counsel for the State placed reliance on the judgment of the Supreme Court in the case of **Excise Commissioner, Karnataka and Anr. Vs. Sreekanta** (AIR 1993 SC 1564) and **State of Uttarakhand & Anr. Vs. Archana Shukla & Ors.** (AIR 2011 SC 3162).

8. I have considered the rival submissions made by learned counsel for the parties and perused the records.
9. It is not disputed that the petitioner- Mahesh Giri was appointed as Assistant Engineer (Civil) Class-II Gazetted only on ad hoc basis vide order dated 11.1.1980. It is not a case of the petitioner that in the matter of his appointment, the relevant recruitment Rules applicable were followed, in the sense that the selections were made by the PSC. At the time when petitioner was appointed in the year 1980, as referred to above, the recruitment and other conditions of services to the post of Assistant Engineer were governed by the then existing Rules known as Madhya Pradesh Irrigation Engineering & Geological Services (Gazetted) Recruitment Rules, 1968 (hereinafter referred to as "the Recruitment Rules of 1968"). Regular recruitment on various cadre posts including post of Assistant Engineers could be made under these Rules only on the basis of select list prepared by the PSC after selection through advertisement of the PSC. However, the regular recruitment were not made by the PSC and when an occasion arose to man the post as stop gap arrangements till regular recruitment are made through PSC in accordance with the Rules, an advertisement was issued on 10.7.1979 for making emergency recruitment of Assistant Engineers. This selection process was initiated by the Engineer-in-Chief, Irrigation Department, Bhopal. A copy of this advertisement is annexed as Annexure R-1 along with the additional return of the State. Clause 10 of the Advertisement stated thus:

"10. The appointment will be on ad hoc basis for a period of 6 months in the first instance which may be extended from time to time if found necessary by the Govt. The candidates will be required to pass a written

test/interview to be held by the PSC at a later date for being appointed in regular cadre services. The candidates who fail to make a qualifying grade in the aforesaid test and interview will be terminated without assigning any reason. Further, the candidates will have no claim whatsoever for appointment/absorption in regular cadre only because of his having been appointed on ad hoc basis.”

10. It is thus clear that it was only meant to be an appointment on ad hoc basis for a period of six months at the first instance which could be extended from time to time, if found necessary, by the Govt. It was made clear to every candidate that the candidate will be required to pass written test/interview to be held by PSC at a later date for being appointed in regular cadre services and those who fail to make a qualifying grade in the test/interview, will be terminated. The advertisement, in no uncertain words, declare that the candidate will have no claim whatsoever for appointment /absorption in regular cadre only because of he having been appointed on ad hoc basis. The petitioner has not disputed the condition of this advertisement. Thus, the petitioner appeared, took part in the process of selection under this advertisement with open eyes that it is only going to be an ad hoc arrangement till regular recruitment are made under the recruitment Rules. The appointment order dated 11.1.1980 (Annexure A-1) clearly stated that appointment is on ad hoc basis and as soon as regular incumbent selected by the PSC is available, the ad hoc appointees would be terminated. The order also reiterated the condition of the advertisement that in order to get regular appointments, the ad hoc appointee will have to get selected through PSC and only on that consideration, his ad hoc appointment would be made regular. The aforesaid factual score has remained undisputed in the present case.
11. It is not the case of the petitioner that he later on faced selection conducted by the PSC according to Recruitment Rules of 1968 and was selected for appointment. It is also not in dispute that the petitioner, later on, came to be regularized under the Rules of Regularization framed by the Governor in exercise of powers conferred by the proviso to Article 309 of the Constitution, known as Madhya Pradesh Regularization of Ad-hoc Appointment Rule, 1986. The petitioner's name appears at Serial No.75 of the said order. The

Regularization Rules under which the petitioner was regularized, contained a specific statutory provision with regard to seniority as below:

“**12. Seniority-** (1) A person appointed under these rules shall be entitled only from the date of the order of regular appointment and shall be placed below the persons appointed in accordance with the relevant recruitment rules prior to the appointment of such person under these rules.

(2) If two or more persons are appointed together, their seniority *inter se* shall be determined in the order mentioned in the order of appointment.”

12. A perusal of the said Rules clearly shows that all the ad hoc appointees who were regularized under these rules, including the petitioner, were entitled to seniority only from the date of order of regularization, to be placed below those incumbents in service appointed prior to such appointment. The petitioners accepted the order of regularization passed in the year 1987. Eversince then, till the date of filing of this petition, the petitioner never challenged the validity or constitutionality of the aforesaid Rules governing conditions relating to seniority of those ad hoc appointees who were regularized under the Regularization Rules of 1986. The Original Application (present petition) was filed by the petitioner before the Tribunal in the 1993 relying upon the decision of the Supreme Court in the case of **Direct Recruit Class-II Engineering Officer's Association** (supra) and order passed by the High Court of Madhya Pradesh in the case of **Pramod Kumar Khare** (supra). The petitioner's first representation was made on 15.4.1990 followed by other representations on 27.9.1990 and 13.7.1992. It would thus be seen that the petitioner having acquiesced in his regularization without challenging the validity of the Rule, sought seniority by counting the period of ad hoc services from 24.1.1980 to 14.5.1987 on the basis of said decision.

13. The case of other petitioners in this batch of petitions is not different from that of petitioner Mahesh Giri in WPC No.748 of 2005. Those petitioners, at various point of time, have filed petitions, all of them being ad hoc appointees appointed by similar process of selection without following the Rules and not by way of selection through PSC but later on regularized under the Regularization Rules

and making similar claim of counting the period of ad hoc services for the purpose of grant of seniority.

14. One of the common submissions made in all these cases was that Rule 7 of the Regularization Rules of 1986, as amended, vide notification dated 11.2.1987 published in the gazette on 11.2.1987, mandated that the seniority shall be granted from the date of ad hoc appointment. Upon close scrutiny of aforesaid provision, the argument appears to be misconceived in law. By amendment, the explanation existing in the Rule was omitted and sub-rule (3) of Rule 7 was amended. The Rule as amended is reproduced hereinbelow :-

AMENDMENTS

In the said rules:-

(1) x x x

(2) **In sub-rule (3) of Rule 7-**

(a) for the sentence, "The seniority shall be assessed from the date of their ad hoc appointments from which they are in continuous service", the sentence "The seniority shall be assessed on the basis of the total length of service rendered as ad-hoc appointee irrespective of break in service" shall be substituted;

(b) Explanation shall be omitted.

15. A perusal of the Rule clearly shows that it lays down principle on which the select list of ad hoc appointees was to be prepared. The only import of the said Rule would be that while preparing select list, the *inter se* seniority amongst the ad hoc appointees would be prepared by taking into consideration the length of ad hoc services, including breaks. Therefore, the principle of seniority engrafted in Rule 7 has limited application for the purpose of preparing the select list while considering cases of large number of ad hoc appointees who were continued in services without being regularized. The principle of seniority was intended only to be apply as a Rule of *inter se* seniority amongst ad hoc employees. But once the select list is prepared and the services were regularized on the basis of said

select list, the seniority in the service, upon regularization, would be governed by Rule 12 of the Regularization Rules 1986, which has been reproduced hereinabove. Therefore, the argument in this regard deserves to be rejected that on the basis of this Rule, the petitioners are entitled to seniority from the initial date of ad hoc appointment. Reliance placed on the decision of the Supreme Court in the case of **Direct Recruit Class II Engineering Officers' Association** (supra) is also misplaced in Law. In that case, the Supreme Court was considering a case where quota Rule had broken down and the appointments were made from one source in excess of quota but after following the procedure prescribed by the Rules of appointment. In that context, the Supreme Court held that such appointees should not be pushed down below the appointees from other sources inducted in services at a later date. Keeping in forefront the view that the rigors of the quota rule were already neutralized and the seniority dependent on continuous officiation, it was held that it would be iniquitous to allow new recruits to get seniority over such appointments. The conclusions were summed up in para -47 of the said judgment. Clause (A) stated thus:

“(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.”

16. The aforesaid principle of law is squarely applicable to those cases where initial appointment is only ad hoc and not according to rules and made as a stop gap arrangement.
17. According to learned counsel for the petitioners, in the case of the petitioners, the principle applicable would be as stated in clause (B) of the aforesaid decision, which is reproduced thus:

(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 regularization of his service in accordance with the rules, the period of officiating service will be counted.”

18. The aforesaid clause will not be applicable in the case of the petitioners for the reason that aforesaid principle was laid down in the context of those cases where the appointments were made according to Rules but in violation of quota rules by making appointment in excess of quota prescribed under the Rules. The submission of learned counsel for the petitioners in this regard are in the teeth of the principle laid down in clause (A) referred to above, intended to be apply where initial appointments is only ad hoc and not according to Rules and made only as a stop gap arrangement. As the petitioners were ad hoc appointees, not appointed according to Rules, but later on regularized under a separate Rule of Regularization, without getting selected through PSC, the applicable principle will be that declared in clause (A) of para-47 of the said decision and not clause (B), as contented.
19. The legal position in the matter of seniority in cases where appointments were made only on ad hoc basis, not in accordance with rules and by way of stop gap arrangements and later on such appointments regularized under the statutory policy of regularization under Regularization Rules, has been authoritatively pronounced by the Supreme Court in the cases of **Sreekanta** (supra), **State of Haryana Vs. Haryana Veternaty and A.H.T.S. Assocr. & Anr.** (AIR 2000 SC 3020) and **Archana Shukla** (supra).
20. In the case of **Sreekanta** (supra), Inspectors of Excise (Junior) were appointed on ad hoc basis. Under a policy of regularization of ad hoc appointment, the Govt. came out with the Rules of regularization under which those ad hoc appointees were regularized in service. A claim was raised that such appointees are entitled to regularization not from the date of order of regularization but from the initial date of their appointment made as stop gap arrangement by way of ad hoc appointment, as their appointments had continued till regularization. To support this contention, reliance was placed on the decision of the Supreme Court in the case of *Direct Recruits Class II Engineering Officer's Association*. The contention was repelled and reliance on the decision in the case of *Direct Recruits* was found misplaced in Law, on following consideration:

“14. After giving our anxious consideration to the respective contentions of the parties it appears to us that the Writ Petitioner/respondent, Sri V. Sreekanta, was appointed as a local candidate through Employment Exchange in view of the specific sanction of the Government for such ad hoc appointment. The terms of appointment in the context of sanction of the said posts by the Government, in our view, clearly demonstrates that such appointment of the said respondent and other employees in 1968 was ad hoc appointment given to local candidates being sponsored by the local Employment Exchange. It was only on October 26, 1971, the said respondent became eligible to be recruited in the said Class III post, and such appointment/or regularisation of his ad hoc appointment was made possible because of the framing of the said special rules of recruitment in 1970. In our view. Mr. Narasimha Moorthy is justified in his submission that the respondent was not entitled to claim seniority from the date of his initial appointment on ad hoc basis but he was only entitled to claim seniority from the date of his subsequent appointment or regularisation under the said special rules of recruitment in 1970. It appears to us that under Rule 3 of the said special rules of recruitment of 1970, the respondent, having possessed the minimum qualifications prescribed by the said special rules of recruitment for recruitment to Class III Posts and the said respondent having been appointed on or after January 1, 1965 as a local candidate to a Class III post and having put in a continuous service of one year prior to October 1, 1970, was eligible to be appointed under the said special rules of recruitment and the respondent was given such appointment with effect from October 26, 1971 under the said special rules of recruitment of 1970. The said respondent was entitled to be treated as direct recruit properly made under the said special rules of 1970 only from October 26, 1971 and the service rendered by him

prior to the said date was only on the basis of ad hoc employment not made in accordance with the rules of recruitment. In the aforesaid circumstances, the decision of the Division Bench of the Karnataka High Court appears to be clearly erroneous and we have no hesitation in setting aside the same. Learned Single Bench of the Karnataka High Court, in our view, has rightly dismissed the Writ Petition and we affirm the said decision. The appeal is accordingly allowed without any order as to costs.”

21. From the aforesaid consideration, it is crystal clear that the benefit of seniority from the initial date of appointment, to those who were appointed on ad hoc basis without following the principles of recruitments under the Rules and only by way of stop gap arrangements, was not tenable in the Law and such class of employees could be granted seniority only from the date of regularization and not from the date prior to that much less from the initial date of ad hoc appointments.

In the present case, there is specific Rule 12 which incorporates the aforesaid principles of seniority laid down by the Supreme Court.

22. In a later decision in the case of **Haryana Veterinary** (supra), the aforesaid principles were reiterated, it being again a case of regularization of ad hoc appointees and claim of counting period of ad hoc services for entitlement to selection grade/revised pay scale by treating the period of ad hoc services as regular services for such purpose. It was held as under:

“5.....we fail to understand how services rendered by Rakesh Kumar from 1980 to 1982, which was purely on ad hoc basis, and was not in accordance with the statutory rules can be taken into account for computation of period of 12 years indicated in the Circular. The majority judgment of High Court committed serious error by equating expression "regular service" with "continuous service". In our considered opinion under the terms

and conditions of the Circulars dated 2nd June, 1989 and 16th May, 1990, the respondent Rakesh Kumar would be entitled for being considered to have the Selection Grade on completion of 12 years from 29th January, 1982 on which date he was appointed duly against a temporary post of Assistant Engineer on being selected by the Public Service Commission and not from any earlier point of time. The conclusion of the majority judgment in favour of Rakesh Kumar, therefore, cannot be sustained.”

23. Impermissibility of grant of seniority to such ad hoc employee appointed as a stop gap arrangement, made without following the recruitment rules, regularized in service under the rule of regularization as against a specific rule of seniority only from the date of regularization, came up for consideration before the Supreme Court in the case of **Archana Shukla** (supra).

That was a case where the petitioner was appointed on ad hoc officiating post and later on regularized under Uttaranchal Regularization of Ad hoc appointments (Post under purview of Public Service Commission) Rules 2002. There was specific provision in the said rules that seniority would be granted only from the date of regularization in service and the statutory prescription was taken into consideration by the Supreme Court to hold that claim of seniority from the initial date of ad hoc appointment is liable to be negated. The consideration by the Supreme Court on relevant rules are as below:

“6. Rule 7 (1) of the Rules states as under:

“A person appointed under these rules shall be entitled to seniority only from the date of order of appointment after selection in accordance with these rules and shall, in all cases, be placed below the persons appointed in accordance with the relevant service rules or as the case may be, the regular prescribed procedure, prior in the appointment of such person under these rules.”

7. Admittedly, the respondents were appointed after a selection under the Regularization Rules in the year 2004. Hence, in our view, they can get seniority only from the year 2004 and not from 1988. The rule is clear and hence we cannot debar from the clear meaning of the rule.

8. It has been held in *Raghunath Rai Bareja & Another vs. Punjab National Bank & Others* (2007) 2 SCC 230 that when there is a conflict between law and equity, it is the law which has to prevail in accordance with the latin maxim 'dura lex sed lex' which means 'the law is hard but it is the law'. Equity can only supplement the law, but it cannot supplant or override it. This view was followed in Civil Appeal No. 2684 of 2007 titled *B. Premanand & Others vs. Mohan Koikal & Others* decided on 16th March, 2011.

9. In the present case, Rules 7 is very clear and hence the respondents are not entitled to the benefit of their service from 1988 to 2004 for the purpose of their seniority.”

24. Rule 7 of the Rules referred to in the aforesaid decision is *pari materia* Rule 12 applicable in the present case. Therefore, the ratio of the aforesaid decision squarely applies in the present case also.

25. Number of similarly situated ad hoc Assistant Engineers of the same Department of the Irrigation had earlier approached State Administrative Tribunal claiming benefit of seniority from the initial date of ad hoc appointment, after they were regularized under the Regularization Rules of 1986. Their petitions were allowed by the Tribunal. Those orders were challenged by the State before the High Court in the case of **Dashrath Singh** (supra). The Division Bench, in the said petition and other connected petitions, decided the issue relying upon Rule 12 of the Regularization Rules, to hold that those ad hoc appointees who were regularized under the Regularization Rules of 1986 cannot claim seniority from initial date of appointment against the very statutory

prescription of rule of seniority provided under Rule 12 of the Regularization Rules of 1986. It was held :

“7. The second aspect is with regard to determination of seniority. Mr. Choubey, learned counsel for the only contesting respondent herein, very fairly conceded that Dashrath who was selected under the Rules which were framed in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. Rule 5 of the Rules provides for eligibility for regularization and Rule 12 deals with the seniority. The said Rule reads as under :

“12. Seniority- (1) A person appointed under these rules shall be entitled only from the date of the order of regular appointment and shall be placed below the persons appointed in accordance with the relevant recruitment rules prior to the appointment of such person under these rules.

(2) If two or more persons are appointed together, their seniority inter-se shall be determined in the order mentioned in the order of appointment.

On a scanning of the anatomy of the aforesaid Rule, it is clear as noon day that seniority of a person who is regularized under these rule is to be computed from the date of regularization. Dashrath was regularized on 14.5.1987. Thus, there cannot be any scintilla of doubt that his seniority shall be computed from that date.”.....

It has to be noted that the case of petitioners in batch of petitions are also identical to the cases of those ad hoc Assistant Engineers of Irrigation Department.

26. The decision of the Supreme Court in the case of **Satyavrata Tanan** (supra) is of no help to the petitioners because in that case the issue was whether the Assistant Professor appointed through different means, modes and sources including emergency appointees are entitled to claim the benefit of the service

rendered by them prior to their regularization for grant of senior/selection grade pay scale. The Assistant Professors in that case were, in fact, appointed on emergency basis according to Recruitment Rules of 1967. That Rule specifically provided for emergency appointments and the appointments were made according to those provisions. For these very reasons, the decision of the Supreme Court in the case of **R. Chopra** (supra) will not apply in the case of the petitioner because in that case the Supreme Court directed grant of benefit of seniority on a finding that the initial appointments of the employees were under the Rules. It was found that the appointments having been made in terms of Rules, therefore, totality of the period has to be counted for fixation of seniority in the cadre of Assistant Engineers. This decision is also distinguishable on facts.

27. Reliance placed on the Division Bench Judgment of the High Court of Madhya Pradesh in the case of **State of Madhya Pradesh and Anr. Vs. Dr. Ramesh Chandra Dixit** (Writ Appeal No.655 of 2012) is also misplaced for the reason that, that was a case of Assistant Professor who were appointed as emergency appointees which was permissible under the relevant recruitment rules and the claim was for grant of higher pay scale by treating the period of emergency appointments as regular appointment for purpose of grant of higher pay scale. They were not ad-hoc employees, as is the case of the petitioner here. Therefore, the said decision will have no application in the present case.

28. The petitioners have also rested their claim on the basis that there was an amendment in the M.P. Civil Services (General Condition of Service) Rule 1961 (Annexure D-3 filed along with the additional submission of the petitioner) vide notification dated 2.4.1998 and a rule of seniority of ad hoc employees was incorporated that if a person appointed on ad hoc basis by substantially following procedure laid down by the Recruitment Rules and the appointee continues in the post uninterruptedly till regularization of his service in accordance with the Rules, the period of officiating service shall be counted for seniority.

The aforesaid submission is liable to be rejected because the petitioners have been regularized under a special rule of Regularization promulgated in the year 1986 whereas, this amendment in the Rules, as stated herein above, was made in the year 1998 i.e. long after petitioner's regularization and grant of

seniority under the special rule of regularization. An ad hoc appointee who is regularized under the Regularization Rules of 1986 will be governed by rule of seniority as laid down in the Rule 12 thereof, it being a special provision, excluding operation of rule of general application, as included by way of amendment under the general conditions of service rules in the year 1998. The amended Rule of 1998 will apply only in cases where regularization takes place after the promulgation of the said rules and where it is found that the ad hoc appointment was made by substantially following the procedure laid down under the recruitment rules. The claim of seniority by application of the said rule is not based on any foundational facts. Lastly, the petitioners have sought relief on the basis that in the Panchayat Department, one employee V.K. Jain was granted seniority from initial date of ad hoc appointment, by conjoint application of Rule 7 and Rule 12 of the Regularization Rules 1986. This Court having held hereinabove above, that rule did not permit grant of seniority prior to date of regularization, any illegal order of regularization by the Government would not justify claim of the petitioners, as negative equality, contrary to law, cannot be enforced.

29. In the result, the petitions are dismissed.

Sd/-
(**Manindra Mohan Shrivastava**)
Judge