

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on: October 06, 2022**

Pronounced on: November 02, 2022

+ **W.P.(C) No. 4530/2020 & CM No. 16348/2020**

RAM KISHOR MEENA AND ORS. Petitioners
Through: Mr. Ankur Chhibber,
Mr. Anshuman Mehrotra, Mr. H.S.
Tiwari & Mr. Nikunj Arora,
Advocates

Versus

UNION OF INDIA AND ORS. Respondents
Through: Mr. C.K. Bhatt, Advocate with
Mr. Rahul Sharma, Central
Government Pleader & Mr. Janak
Raj, Inspector

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MR. JUSTICE SAURABH BANERJEE

JUDGMENT

SURESH KUMAR KAIT, J

1. Aggrieved against the order dated 17.07.2020 passed by the respondents, whereby merit list of promotion of 61 candidates to the post of Sub Inspector (Ministerial) in Sashttra Seema Bal (SSB) vide order dated 02.03.2017, has been invalidated, the present petition has been preferred by the petitioners seeking quashing thereof. Petitioners are praying for directions to respondents for permitting permit them continue on the post of Sub Inspector against the vacancies pertaining to the years 2016-17 with all consequential benefits.

2. The facts emerging from the petition are that on 08.11.2016, the respondents had issued an advertisement to fill 08 vacant posts of Sub Inspector (Ministerial) for the year 2016-17 through Limited Departmental Competitive Examination (LDCE). The petitioners being eligible, applied and participated in the written examination held on 18.01.2017, result whereof was declared on 16.02.2017. The terms of Sashastra Seema Bal (SSB), Combatised, Ministerial and Stenographers (Non-Gazetted) Group 'B' and 'C' Posts Recruitment Rules, 2011 mandates that 75% posts are to be first filled by promotion, failing which by deputation; and remaining 25% through LDCE from amongst the Assistant Sub-Inspector (Ministerial) of SSB.

3. According to petitioners, for the year 2016-17, the vacancy position to the post of Sub-Inspector (Ministerial) was 244 posts, out of which 183 posts were to be filled by promotion and remaining 61 posts were to be filled by LDCE; whereas vide advertisement dated 08.11.2016, only 08 vacant posts were issued. So, some of the petitioners made a representation to the concerned respondent to re-calculate the vacancy position to be filled through LDCE for the year 2016-17. Accordingly, the respondent issued Signal dated 02.03.2017 informing that based upon the recalculation of vacancy position, the competent authority had approved select list of 61 candidates for the post of Sub-Inspector (Ministerial) by LDCE, wherein names of petitioners were reflected. Pursuant to Signal dated 02.03.2017, vide FAX/VAN Message bearing No. 299/RC/SSB/SI (Min) LDCE/2016-17/1237-39 of even date, the competent authority approved appointment of 61 candidates,

including the petitioners herein, to the rank of Sub-Inspectors (Ministerial). The petitioners joined in the rank of Sub-Inspector (Ministerial) pursuant to order dated 02.03.2017 and successfully completed their probation period in March, 2019; and the respondents vide order dated 15.07.2020 confirmed and regularized the petitioners to the said post effective therefrom. However, vide order dated 17.07.2020 issued by the respondents, it was informed that the merit list dated 16.02.2017, promoting 08 candidates to the post of Sub-Inspector (Ministerial) is valid; whereas the merit list of 61 candidates vide order dated 02.03.2017, shall be treated as invalid and cancelled. Consequentially, the respondents cancelled the appointment of petitioners to the post of Sub-Inspector vide another order dated 17.07.2020. Hence, the present petition has been filed.

4. During the course of hearing, learned counsel appearing on behalf of petitioners submitted that the settled position of law is that once benefit of promotion has been given, it cannot be taken away without giving a reasonable opportunity of hearing to the affected person. Learned counsel submitted that in the present case, petitioners were not given an opportunity of hearing and respondents in *mala fide* manner have left the petitioners to suffer for no fault of theirs. Reliance was placed upon decision of Hon'ble Supreme Court in ***Prakash Ratan Sinha Vs. State of Bihar*** 2009 (14) SCC 690.

5. Learned counsel submitted that a few candidates who had not been selected for appointment in the merit list dated 02.03.2017, had filed writ petitions before this Court being W.P.(C) No. 2559/2017, ***Vikrant***

Nispagshi Sharma & Ors. Vs. Union of India & Ors. and W.P.(C) No. 2081/2017, titled as *Shiv Charan Baswal & Ors. Vs. Union of India & Ors.* and also High Court of Patna, being CWJC No. 3631/2017, titled as *Aman Kumar and Ors. Vs. Union of India and Ors.* Learned counsel submitted that in W.P.(C) No. 2559/2017, this Court did not accept the plea of unselected candidates for having not appeared in the selection process and vide order dated 22.10.2018 it was held that since the posts over and above 08 posts notified, were not carry forward posts but are backlog posts, therefore having not participated in the selection process would not cause any prejudice to them.

6. It was next submitted that the respondents in their affidavit filed in W.P.(C) No. 2081/2017 have admitted that in the advertisement dated 08.11.2016, 08 vacancies were notified but since the calculation was not correct, the same was increased to 61 vacancies vide order dated 02.03.2017. It was also submitted that even though respondents had initiated a Court of Enquiry on 30.09.2019 to investigate why the vacancies for the year 2016-17 were increased from 08 to 61, but respondents have failed to appreciate that petitioners were appointed to the subject post on 02.03.2017 and after successfully completing their period of probation, they were regularized from March, 2019 vide respondents' order dated 15.07.2020. Learned counsel emphasized that after working for more than three years on the substantive post, petitioners' appointment could not have been cancelled without giving a Show Cause Notice or holding a departmental enquiry. To submit so, reliance was placed upon decision of Hon'ble Supreme Court in

Rajendra Vs. State of Maharashtra and Ors. 2008 (11) SCC 90.

7. Learned counsel further submitted that there is no doubt that the number of vacancies advertised/ notified and filled were different, however, the mistake of calculation of vacancies, if any, was on the part of respondents and petitioners cannot be put at disadvantage for the fault of respondents. Moreover, having been appointed to the post of Sub-Inspector (Ministerial), the petitioners could not apply for the vacancies for the years 2017-18 and 2018 issued by the respondents and so, in the year 2020 the petitioners cannot be made to suffer for the fault of respondents. Lastly, learned counsel submitted that respondents be not arbitrarily permitted to invalidate the merit list of 61 candidates dated 02.03.2017 and the impugned order 17.07.2020 deserves to be set aside.

8. Learned counsel appearing on behalf of respondents, on the other hand, submitted that any order passed without the approval or sanction of the competent authority is illegal and arbitrary and, therefore, the 53 vacancies over and above notified 08 vacancies, deserve to be set aside having not followed due procedure for sanction. Learned counsel next submitted that for filling up the notified 08 vacancies pertaining to the year 2016-17, 165 Assistant Sub-Inspectors were eligible, out of which 130 had appeared in the selection process and a strict examination process was followed. However, 02 candidates who could not make through the selection process, submitted representations for re-calculation of the vacancies and the then IG (Pers), without taking approval of DG (SSB) in contravention of the vacancies notified, increased the vacancies from 08 to 61. Accordingly, a court of inquiry

was conducted, which concluded in affirmation of the said irregularity and it was held that the 08 ASI(Min) who got promoted through LDCE during the year 2016-17 against the 08 vacancies notified in the advertisement dated 08.11.2016, be treated as appointed. But the promotion of 53 ASI (Min) selected after revision of the vacancies, be cancelled for having not followed due procedure prescribed. In such facts and circumstances, the order dated 17.07.2020 was passed by the respondents whereby the selection and appointment orders to the post of SI(Min) through LDCE 2016-17 was cancelled. It was also submitted by learned counsel that once the notification of selection of 53 candidates over and above the notified 08 vacancies is cancelled, there was no question of issuing Show Cause Notice to the petitioners.

9. Learned counsel for respondents next submitted that out of 53 petitioners, the order of confirmation of probation period has been issued in respect of 17 petitioners only. Moreover, if the appointment of all the 53 petitioners to the promotional post of SI is cancelled, their ranks will not be lowered as they all are eligible for promotion w.e.f. 01.01.2019 and so, there will be minor change in their seniority. Further, the stand of respondents is that consequent upon issuance of cancellation order dated 17.07.2020, none of the petitioners are being reverted to ASI(Min) as on date, rather the formal review DPC for considering their promotion to the rank of SI(Min) against vacancy year 2019 i.e. as on 01.01.2019 is under consideration and all the petitioners will be considered for promotion to the rank of SI (Min) w.e.f. 01.01.2019 on the recommendations of review DPC. It was empathically submitted that no major shuffling in

seniority will happen, as during the vacancy years 2016-17, 2017-18 and 2018, DPC was not convened and no promotion was made. However, it was stated that 04 candidates who were selected through LDCE 2018, shall be seniors to the petitioners. Reliance was placed upon decisions of Supreme Court in *Rakhi Ray Vs. High Court Of Delhi* 2010 AIR (SC) 932; *Mukul Saikia Vs. State Of Assam* (2009) 1 SCC 386 and *Hoshiar Singh Vs. State Of Haryana* 1993 AIR (SC) 2606 to submit that appointment beyond the vacancies notified is impermissible in law. Reliance was also placed upon another decision of Supreme Court in *Nand Kumar Manjhi & Anr. Etc. Vs. The State Of Bihar & Ors. Etc.* 2019 AIR(SC) 2204 to submit that in the matters of promotion, final decision has to be of the department and not by the employee waiting for promotion and also that promotion cannot be effected from the date of creation of promotional post. Also, reliance is placed upon decision in *State of U.P. and Others Vs. Rajkumar Sharma and Ors.* (2006) 3 SCC 330 to submit that filling up of vacancies over and above the number of vacancies advertised would be violative of the fundamental rights granted under Articles 14 and 16 of the Constitution and also that such selectees cannot claim the appointment as a matter of right. Mere inclusion of candidates' name in the list does not confer any right to be selected, even if some of the vacancies remained unfilled and the concerned candidates cannot claim that they have been given a hostile discrimination.

10. Lastly, learned counsel for respondents submitted that the administrative decision to cancel the appointment of 53 candidates

appointed through LDCE 2016-17; due to miscalculation of vacancies and affecting the rights of the eligible candidates, is just and proper and this petition deserves to be dismissed.

11. In rebuttal, learned counsel for the petitioners submitted that the order dated 22.10.2018 passed in W.P.(C) No.2559/2017 has not been challenged by the respondents and it was averred in the said counter affidavit has averred that since calculation of 08 vacancies was incorrect, it was increased to 61 vacancies. The petitioners asseverated that *ex post facto* vacancies can always be sanctioned and if the eligibility of the petitioners are to be reckoned w.e.f. 01.01.2019, it will result in putting the petitioners junior to their batch-mates. The petitioners have strenuously urged that once they have been appointed to the substantive post and working on it, their appointment should not have been cancelled.

12. The arguments advanced by learned counsel representing both the sides were heard at length and the material placed on record as well as decisions cited have been considered by this Court.

13. For filling up the 25 % vacant posts i.e. 08 vacancies to the post of Sub Inspector (Ministerial) pertaining to the year 2016-17, an advertisement dated 08.11.2016 for LDCE was issued/ notified by the respondents. Out of 165 eligible candidates, 145 had applied for LDCE and 135 candidates, including the petitioners, had appeared in the said examination. The merit-wise result of 08 successful candidates in the examination was declared on 16.02.2017. Thereafter, 02 candidates who could not make through within those 08 vacancies, made representations

to the respondents for re-calculation of the vacancies for the 2016-17. Vide signal dated 02.03.2017, the respondents informed that consequent upon recalculation of the vacancies, 61 candidates who had appeared in the LDCE, were appointed to the rank of Sub-Inspectors (Ministerial). According to petitioners, they completed their probation in March, 2019 and were confirmed to the said post on 15.07.2020; whereas the stand of respondents in their counter affidavit is that only 17 candidates out of list of 61 candidates, were confirmed to the said post on 15.07.2020. Just after two days, vide order dated 17.07.2020, the respondents held that the order dated 16.02.2017, promoting 08 candidates to the post of Sub-Inspector (Ministerial) is valid; whereas the merit list of 61 candidates vide order dated 02.03.2017 is cancelled. The petitioners before this Court are those 53 candidates whose appointment to the post of Sub Inspector (Ministerial) has been cancelled by the respondents.

14. It is an undisputed position that initially vide advertisement dated 08.11.2016 respondents had invited applications from eligible officers for appointment to the post of Sub-Inspector (Ministerial) for 08 vacancies pertaining to the year 2016-17. Under what circumstances the vacancy position for the year 2016-17 increased from 08 to 61, came under radar of respondents and accordingly, vide order dated 30.09.2019 detailment of Board of Officers/ officials for conducting a Court of Inquiry was directed. The constituted Board held proceedings of Court of Inquiry from 01.10.2019 till 31.05.2020 and opined as under:-

“i) After careful observation and study of the statements, records and documents relevant to the

*Court of Inquiry, it is ascertained that gross inconsistency has been followed by Pers-III branch in calculating the vacancies. **The calculation of vacancies over the years have been arrived at without specific reference to established and relevant rules/RRs/DoP & T instructions.** The Pers III branch failed to adhere to correct way and method of calculation of vacancies. In the instant case the number of vacancies were increased from 08 to 61 without any plausible and valid reasons. It has also been observed that the concerned officers have failed to carry out their designated duties and responsibilities in the desired and expected manner rather their working and performance reflects that they have been ignorant and not confident about the correct method of calculations of vacancies for the post of Sub-Inspector (Min) over the years from 2010 onwards.*

*ii) Different formulas/ methods for calculation of vacancies were used for conduct of recruitment / promotion / Appointment for the post of SI (min) since 2010-11. From the year 2010-11 to 2013-14 one particular set of methodology was adopted by considering overall vacancies in 75:25 ratio for promotion and LDCE. **From the year 2014-15 to the year 2016-17, vacancies of SI (min) arising in a particular years were calculated by following the ratio of 75:25 as stipulated in RRs. In both the cases unfilled vacancies were not carried forward.***

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*vi) However, on going through all relevant records and documents related to the enhancement and revision of vacancies the Court is of the opinion that the **re-calculation of vacancies, after the declaration of result, was not in order, it provided***

undue benefit to the undeserving candidates and denied equitable opportunity to the candidates who have not applied and thus resulting in court cases and representation.

*vii) No plausible and justified reasons or supportive grounds have been mentioned or explained by any of the concerned staff dealing with Pers-III for revising the vacancies after the declaration of the result. They have been submitting a reference to a meeting chaired by the then IG (Pers) and directions on conclusion of the meeting for re-calculating of vacancies and they have not mentioned any other ground provisions of relevant rules for change in calculation of vacancies. It is observed and arrived that all officials specially the then AD (Pers-III) Shri Padam Bamgial, who has been in the same branch since 2012, have utterly failed to apply his knowledge and **no specific reference to the relevant rules at the time of re-calculation of vacancies has been made on personal whim and fancies of the individual at helm of affairs.***

No application of mind has been observed in re-calculation of vacancies and no reference of the relevant rules have also been made.”

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xv) The dates in this case are important. The advertisement for 8 posts/ vacancies was issued on 8th Nov, 2016 and till the date of publication of result i.e. 16 Feb, 2017, no representation was made by any candidate regarding miscalculation of vacancies. It only started once the merit list was out.

xvi) It is pertinent to mention here that the representation submitted by 2 ASI, after the

declaration of the result, were never examined on file with reference to the rules and decision taken in a meeting chaired by the IG (Pers).

xviii)Revising the calculation after the merit is prepared is totally irregular, as by that time the name of beneficiaries were known.

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xxiii)The IG (Pers) was responsible for taking a decision in a meeting and issuing directions for recalculation of vacancies after declaration of the merit, without examining the issue on file w.r.t. the rule position, thus benefitting candidates who could not make it to the merit.

xxiv) Correct method of Calculation of vacancies should be followed in accordance with the DoP& T OM No. AB.14017/2/1997-Estt /(R) Pt dated 19.01.2007.

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15. Premised upon the afore-noted opinion, the Board recommended as under:-

“1. It has been established that wrong calculation of vacancies was done with improper interpretation and the same was revised after announcing initial result for LDCE SI (min) 2016-17, with the intent to benefit the candidates, who otherwise could not get selected in the initial merit list. The additional calculation was an administrative procedural mistake, which led to benefit 53 candidates to get promoted to SI (Min). However, there was no mistake on the part of these 53 candidates as the same could not be

established during the course of inquiry.

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The seniority list of all beneficiaries except 08 SI (min) who got promoted based on initial result of SI (min) LDCE 2016-17 and those who got selected in subsequent LDCE's may be recalculated & re-fixed in such a manner that it should be as per earlier seniority of these 53 candidates in the ASI rank (before promotion) to bring all at par. A review DPC may be convened with clear mandate to settle this anomaly by re-fixing the seniority as per original seniority of ASI (min) rank and accordingly seniority of SI (min) be revised. None of the beneficiary is required to be reverted as their immediate juniors have also been promoted. In this way, all the beneficiaries would be placed above their immediate juniors as per seniority of ASI (Min).

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16. The fulcrum of afore-noted recommendation resulted in disciplinary/ administrative departmental action against the erring Dealing Assistants and Officer who perpetuated the faulty calculation of vacancies. Though the recommendation of the Court of Inquiry specifically mentions that there is no fault of 53 candidates, however, pursuant to the afore-noted recommendations, the respondents vide order No. 299/RC/SSB/SI(Min)/LDCE/2016-17/2173/2320 dated 17.07.2020 directed as under:-

“i) The 08 ASI (Mins) who got promoted through LDCE during the year 2016-17 against the vacancies notified in the advertisement dated 08/11/2016, may be considered valid as due procedure was followed.

ii) As regards the additional 53 ASI (min) selected

and got promoted through LDCE after revision of vacancies for the year 2016-17 may be cancelled as due procedure was not followed.”

17. Further, vide another Order being No. 9-1/20/LDCE-SI (Min)/SSB/ Pers-III of even date, the appointment of 53 SI (Min) was cancelled by the respondents and they were reverted back to their post of ASI (Min) from the date of their promotion i.e. 02.03.2017.

18. We have also gone through another communication of respondents sent by FAX/WAN Msg. dated 20.07.2020, whereby all the Unit Heads were informed that a review DPC for promotion of ASI (Mins) shall be convened for assessing their suitability for promotion to the rank of SI (Min) for the vacancy year 2019 (01/01/2019 to 31/12/2019). Pertinently, the above said communication mentions the name of all the 53 candidates, who have been reverted by virtue of order dated 17.07.2020.

19. This Court has also gone through the Advertisement bearing No.334/RC/SSB(MIN)/LDCE/2017/2237-2390 dated 23.02.2018, whereby respondents had invited applications for appointment to the post of Sub-Inspector and total 54 vacancies were notified for the year 2017-2018. Vide Order bearing No. XX-9/17/SSB/LDCE-SI(Min)/VOL.II/P.III (BN.) /9834-36, four (04) ASI (Min) were appointed to the post of SI (Min).

20. There is another Advertisement bearing No.334/RC/SSB/SI (Min) LDCE/2018/2091-2245 dated 18.04.2019 issued by the respondents, vide which applications were invited to fill 63 vacancies to the post of SI (Min) for the year 2018. However, vide Wan Message dated 29.10.2019, the aforesaid Advertisement was cancelled by the respondents due to

administrative reasons, though not mentioned therein.

21. As noted above, the Advertisements dated 23.02.2018 and 18.04.2019 show that for the year 2017-18, the vacancy position for the post of SI (Min) through LDCE was 54 and for the year 2018, it was 63. With regard to vacancy position for the year 2016-17, vide Advertisement bearing No.299/RC/SSB/SI-Min (LDCE)/2016-17/7080-7183 dated 08.11.2016, only 08 vacancies were notified, however, vide FAX/ WAN Message bearing No. 299/ RC/SSB/SI-Min (LDCE)/2016-17/7080-7183 dated 08.11.2016, the vacancies recalculated by the respondents was 61, though the same stood later withdrawn by the respondents. However, we fail to understand, when in the year 2016-17, the available vacancies were as less as 08 vacancies, how in the subsequent years, i.e. 2017-18 and 2018, the vacancies advertised were as high as 54 and 63. In Para-(i) of the Opinion of the Board of Court of Inquiry it has been noted that the respondents had not adopted the correct criteria for calculating the correct vacancies for the years 2014-15 and 2016-17. It would not be misplaced to presume here that even for the year intermediate i.e. 2015-16 also, the vacancy position would not have been correctly calculated. It is an admitted position by the respondents that the unfilled vacancies for the years 2014-15 and 2016-17 were not carried forward and again, in our considered opinion, this can be the reason for notifying only 08 vacancies for the year 2016-17.

22. Once it has been admitted by the respondent that there has been an error in calculating the vacancies for the years 2014-15 and 2016-17, the order dated 17.07.2020, cancelling the appointment of 53 candidates

comes under a cloud. Thus, it seems to be dubious whether the signal dated 02.03.2017, revising the select list to 61 candidates instead of 08 already published, rightly reassessed the available vacancies OR the order dated 17.07.2020, cancelling the appointment of 53 additional candidates, was right. Relevantly, it is not just the wrong calculation of number of vacancies by the respondents, but also the procedure prescribed in notifying the vacancies from 08 to 61; and the manner of appointment of 53 candidates, which is a matter of consideration by this Court.

23. It is the settled legal position that *vacancies cannot be filled up over and above the number of vacancies advertised, as it would be in violation of rights of those who become eligible after the advertised is notified*. It is also settled legal position that *while notifying the vacant posts, due approval of competent authority has to be taken*. It is also settled position that *for making appointments to a post due procedure prescribed under the applicable recruitment rules has to be followed*. It has already been held in a number of decisions that *creation and sanction of posts is the prerogative of the executive and legislative authorities and the courts cannot take upon themselves the power of creation of posts*.

24. There is also no dispute that prior to making appointments, the available vacancies must be notified and applications should be invited from all eligible candidates. Also that the appointments cannot be made over and above the vacancies notified in the advertisement given. The undisputed position in the present case is that neither sanction from the appropriate authority was taken for creation of 53 additional vacancies

nor these vacancies were notified calling upon the eligible applicants to appear in the examination process to fill up these posts. Instead, acting in a clandestine manner, the respondents filled the 53 vacant seats out of the list of candidates who had appeared in the examination process for filling up 08 vacancies pursuant to advertisement dated 08.11.2016. Thereby, not only the respondents acting in an irresponsible manner, first committed an error in calculating the vacancies pertaining to the year 2016-17, thereafter violated the procedure prescribed by not obtaining sanction from the competent authority and made appointments.

25. Relevantly, a few eligible officers, who had not applied and appeared in the LDCE selection process for 08 vacancies pursuant to advertisement of 08.11.2016, preferred petitions before different High Courts. One such petition, being W.P.(C) No. 2559/2017, was dismissed by a Coordinate Bench of this Court vide order dated 22.10.2018 holding *that no prejudice shall be caused to the unselected candidates, who had not appeared in the selection procedure, as the Court was informed that the said posts were not carry forward posts but the backlog posts*. In W.P.(C) No. 2559/2017, the challenge to the appointment of 61 candidates was to the effect that initially 08 vacancies were notified, but later on by issuing corrigendum, the vacancies were enhanced to 61. However, the opinion of the Board holding Court of Inquiry was rendered on 31.05.2000 i.e. after the decision dated 22.10.2018 in W.P.(C) No. 2559/2017 was pronounced. It is not hypothetical to assume had there actually been 61 vacancies existing at the time of notifying the advertisement dated 08.11.2016, all 165 eligible officers would have

applied.

26. The petitioners before us have also placed reliance upon counter affidavit filed by the respondents in W.P.(C) No.2559/2017 wherein the respondents have averred that since calculation of 08 vacancies was incorrect, it was increased to 61 vacancies. However, in the Additional Counter Affidavit filed by respondents in the present case, the respondents have averred that the counter affidavit filed in the said case was with the approval of IG (Pers), whereas counter affidavit was required to be approved by SDG/ADG and hence, any averment made in the said counter affidavit, cannot be taken as lawful.

27. Petitioners have also placed reliance upon decision in ***Prakash Ratan Sinha (Supra)*** to submit that they were not given opportunity of hearing and if any administrative decision results in civil consequences, the decisions have to be judicially reviewed. In the said case, by an administrative decision nomenclature of the employee from daily wager to accounts clerk was changed, without affording an opportunity of hearing, which had affected the promotional avenues.

28. Whether or not reverting the petitioners to their substantive post without affording them an opportunity of hearing, was against the principles of natural justice or not, on this aspect different opinions have been rendered by the Courts. In ***Shridhar Vs. Nagar Palika, Jaunpur and Others*** 1990 SCC (L&S) 600, the Hon'ble Supreme Court has observed as under:-

“8. The High Court committed serious error in upholding the order of the Government dated

13.2.80 in setting aside the appellant's appointment without giving any notice or opportunity to him. It is an elementary principle of natural justice that no person should be condemned without hearing. The order of appointment conferred a vested right in the appellant to hold the post of Tax Inspector, that right could not be taken away without affording opportunity of hearing to him. Any order passed in violation of principles of natural justice is rendered void. There is no dispute that the Commissioner's Order had been passed without affording any opportunity of hearing to the appellant therefore the order was illegal and void. The High Court committed serious error in upholding the Commissioner's Order setting aside the appellant's appointment. In this view, Orders of the High Court and the Commissioner are not sustainable in law."

29. Similarly, in ***Shrawan Kumar Jha and Others Vs. State of Bihar and others*** 1991 Supp (1) SCC 330, the Hon'ble Supreme Court has held as under:-

"3. It is not necessary to go into all these questions. In the facts and circumstances of this case, we are of the view that the appellants should have been given an opportunity of hearing before cancelling their appointments. Admittedly, no such opportunity was afforded to them. It is well settled that no order to the detriment of the appellants could be passed without complying with the rules of natural justice. We set aside the impugned order of cancellation dated November 3, 1988 on this short ground. As suggested by the learned Solicitor General, we direct that the secretary (Education), Government of Bihar, or to other person nominated by him should give an opportunity of hearing to the appellants and thereafter give a finding as to

whether the appellants were validly appointed as Assistant Teachers. He shall also determine as to whether any of the teachers joined their respective schools and for how much duration. In case some of them joined their schools and worked, they shall be entitled to their salary for such period.”

30. In the Court of Inquiry it has been opined that *no plausible and justified reasons or supportive grounds have been mentioned or explained by any of the concerned staff dealing with Pers-III for revising the vacancies after the declaration of the result.* In all fairness, respondents have also themselves admitted that there is no fault of 53 candidates, who have been appointed. When this petition came up for hearing before this Court on 24.07.2020, respondents were directed to maintain *status quo* with regard to appointment of 53 petitioners on 02.03.2017. It is pertinent to mention here that the petitioners joined in the rank of Sub-Inspector (Ministerial) pursuant to order dated 02.03.2017 and successfully completed their probation period in March, 2019; and the respondents vide order dated 15.07.2020 confirmed and regularized them to the said post and by now, they have not only gained work experience but also received financial benefits, honour and respect attached to the rank. Though there is no dispute that their appointment have been made contrary to the prescribed rules, but no opportunity of hearing was granted to the petitioner before reverting them to their substantive post.

31. The factual scenario in the present case is that 53 candidates have been appointed to the post of SI (Min) through LDCE for the vacancies of the year 2016-17, which actually never existed; but at the same time

they have been holding and working on these posts since their appointment on 02.03.2017. The plea of petitioners is that just two days prior to the issuance of impugned order dated 17.07.2020, they were confirmed to the said posts, on the other hand respondents' stand is that out of 53 candidates only 17 candidates have been inadvertently confirmed to the post. Be that as it may.

32. The respondents have pleaded before us that the Review DPC in respect of 53 SI (Min), who had been selected after revision of vacancies for the year 2016-17, are eligible for promotion from 01.01.2019 and DPC is yet to be convened, for which nominations have been invited and there will be only minor changes in their seniority. The petitioners have pleaded that if the impugned order dated 17.07.2020 cancelling their appointment and reverting them to the post of ASI is not set aside, they will suffer huge loss. The petitioners have also pleaded that in such case, their seniority will reckon from 2019, whereas after the year 2016, examination process to fill the vacant posts of SI (Min) falling in the year 2018-19 were also held, wherein they had not participated and now, if they are promoted from 01.01.2019, their juniors will come above their seniority.

33. When this petition came up for hearing before this Court on 24.07.2020, this Court had directed the respondents to maintain *status quo* with regard to appointment of 53 petitioners as on 02.03.2017. Though we do not dispute the proposition of law already set down that appointments made against the relevant Rules and on the posts which are not sanctioned; and promotion and seniority attached thereto, cannot be

permitted to hold the field, however, this Court is constrained to take serious note of respondents' shilly-shally with the process of appointment. Not only at the first instance respondents have been in error in calculating the vacancies since the year 2014, but also their acts have been shrouded with mystery since the joining of petitioners, as the petitioners joined in the rank of Sub-Inspector (Ministerial) pursuant to order dated 02.03.2017 and successfully completed their probation period in March, 2019; and the respondents vide order dated 15.07.2020 confirmed and regularized them to the said post. Over and above, the respondents first filed affidavit before this Court in W.P.(C) No.2559/2017 stating that calculation of 08 vacancies was incorrect, and so, increased to 61 vacancies; and thereafter did a volte face in the present case to submit that the said affidavit should not be relied upon, having not been approved by SDG/ADG. It is very strange that an organisation like SSB has acted in such an irresponsible manner taking stances as per their choices.

34. Accordingly, we are of the considered opinion that for the incautious behaviour of respondents, the 53 candidates, who have been subsequently appointed, cannot be made to suffer. The peculiar fact of the case is that these 53 petitioners have been successfully holding the posts of Sub-Inspector (Min) since their appointment in the year 2017 and after their confirmation and being regularized, have gained good experience and knowledge by now; and also that their appointment are not against future vacancies but is against the 'carry forward' vacancies of the previous years. Hence, we find that to remove 53 petitioners from

the post of Sub-Inspector (Min) would be against the principles of natural justice. It is extremely hard for us to turn the clock back and relegate the 53 petitioners to a position, which indisputably stands long relieved by them.

35. The Supreme Court in ***Pankjeshwar Sharma & Others Vs. State of Jammu & Kashmir and Others*** (2021) 2 SCC 188, dealt with a case wherein appointments to the post of Sub-Inspector of Police were made over and above the vacancies notified; and the unsuccessful candidates challenged the appointments; and after multiple rounds of litigation, the Supreme Court held that the appointment of 22 candidates, whose appointment was challenged, was an exceptional case, where the appointment was made on a concession granted by the State for giving a quietus to the long drawn litigation and held as under:

“37. It is undisputed that by the time we are called upon to decide the matter, the so-called 22 candidates against whom there is a lis raised by the present appellants, had completed almost more than 12 years of service and thus having rich experience in the field and the subsequent selection has also been held of the post of Sub-Inspector pursuant to an advertisement issued in February 2001 and the concession which was recorded of the learned Advocate General of the State by this Court in its order dated 10-5-2007 [Tanvir Hussain Wani v. S.D. Singh, 2007 SCC OnLine SC 32] at a given point of time also appears to be bona fide, to give quietus to the ongoing litigation pending in courts for sufficient long time and no other litigation at that given point of time was pending in the court of law, in the given situation, this Court is not inclined to

disturb the appointment of those 22 candidates which has been questioned by the appellant candidates in the present batch of appeals.”

36. In view of the afore-noted reasons, this case being undoubtedly one of such exceptional circumstances, the signal/ order dated 17.07.2020 is hereby quashed while making it clear that the Revised Select List of SI (Min), LDCE, 2016-17 dated 02.03.2017 shall remain in force and all the 61 appointees, including all the 53 petitioners herein, in terms of their merit, shall continue to work from the date of their appointments i.e. 02.03.2017.

37. In the event thereof, the 04 candidates appointed through LDCE in the year 2018 against the vacancies of the year 2017-18 shall be considered appointed from the date of order dated 05.09.2018, vide which they were appointed.

38. With aforesaid directions, the present petition is accordingly disposed of. Pending application is disposed of as infructuous.

(SURESH KUMAR KAIT)
JUDGE

(SAURABH BANERJEE)
JUDGE

NOVEMBER 02, 2022

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