

State Of Haryana & Ors vs Vijay Singh & Ors on 22 August, 2012

Equivalent citations: AIR 2012 SUPREME COURT 2901, 2012 (8) SCC 633, 2012 AIR SCW 4713, 2013 LAB IC 98, (2012) 3 SERVLJ 435, (2012) 10 ADJ 7.1 (SC), 2012 (7) SCALE 484, AIR 2012 SC (CIVIL) 2546, (2012) 135 FACLR 191, (2012) 7 MAD LJ 49, (2012) 4 SCT 332, (2012) 5 SERVLR 691, (2012) 7 SCALE 484, (2012) 4 ESC 566

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Bench: Sudhansu Jyoti Mukhopadhaya, G.S. Singhvi

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5947 OF 2012
(Arising out of SLP (C) No. 29274 of 2009)

State of Haryana and others

... Appellants

Versus

Vijay Singh and others

... Respondents

J U D G M E N T

G. S. Singhvi, J.

1. Leave granted.

2. On being selected by the District Level Committee which had considered the candidature of those sponsored by the Employment Exchanges, respondent Nos.1 to 13 were appointed as Masters in the subjects of Science, Maths and Social Studies, respondent No.14 was appointed as Physical Training Instructor and respondent No.15 was appointed as Hindi Teacher purely on ad hoc basis between 1994 and 1996 by the District Education Officers. The relevant portions of one such order issued on 16.10.1995 are reproduced below:

“OFFICE OF THE DISTT. EDUCATION OFFICER, PANIPAT Order No.E-1/95/3515-65 Dated Panipat 16.10.1995 On the recommendation of the Distt. Level Committee, the following candidates are hereby appointed purely on ad hoc

basis as Master/Mistresses in the subject noted against them in the Haryana Education Service Non Gazetted Class II (School cadre) Men/Women branch (as the case may be) w.e.f. the they join their duty in the institution indicated against their names in the grade of Rs.1400-2600 plus usual allowances sanctioned by the Haryana Government from time to time on the following terms and conditions:-

Sl.No	Name and address of the candidate	Place of posting	Remarks
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S.S. Master (Male), General Category

1 to 3	xxxxxx	xxxxxxx	xxxxxxx
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S.S. Master (Male) B.C. Category

1.	xxxxxx	xxxxxxx	xxxxxxx
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S.S. Master, S.C. Category (Male) Block A

1.	xxxxxx	xxxxxxx	xxxxxxx
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S.S. Master, Block B

2.	xxxxxx	xxxxxxx	xxxxxxx
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S.S. Master Male, ESM

1 & 2.	xxxxxx	xxxxxxx	xxxxxxx
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S.S. Mistress General Category

1 to 3	xxxxxx	xxxxxxx	xxxxxxx
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S.S. Mistress Category Scheduled Caste, Block A. |1. |xxxxxx |xxxxxxx |xxxxxxx | Science Master Male General Category |1. |Vijay Singh s/o |G.S.S.S. Mandi |Against | |Om Parkash V.P.O.| |vacancy | |Palri (Panipat) | | |2&3 |xxxxxxx |xxxxxxx |xxxxxxx | Science Mistress General Category |1 & 2. |xxxxxx |xxxxxxx |xxxxxxx | Math Master General Category Male |1 and 2. |xxxxxx |xxxxxxx |xxxxxxx | Math Mistress General Category |1 |xxxxxx |xxxxxxx |xxxxxxx | Terms & Conditions:

1. The above appointments are purely on ad hoc basis for six months or till the candidates are available for regular appointment whichever is earlier. Their services

are liable to be terminated without assigning any reason or notice at any time.

2 to 6 xx xx xx xx”

3. In furtherance of the policy decision taken by the State Government in the light of the judgment of the High Court in Hassan Mohd. v. State of Haryana 2004 (2) SCT 505, the services of the respondents were regularized w.e.f. 1.10.2003. The opening paragraph and clause 5 of the terms and conditions embodied in order dated 3.8.2004/12.8.2004 passed by the Director, Secondary Education, Haryana for regularization of a number of employees of District Ambala including respondent No.12 Prem Kumar are extracted below:

“OFFICE OF THE DIRECTOR SECONDARY EDUCATION HARYANA
CHANDIGARH ORDER No. 2/4-2004-E-V (5) DATED CHANDIGARH THE
03.08.2004 In pursuance of the decision contained in the Haryana Govt.

letter No.6/9/03-IGS-I dated 03.10.2003, the following Master/Mistress who were appointed on ad hoc/contractual basis and have completed three years service upto 30.09.2003 and were in service on that date are hereby appointed as officiating Masters/Mistress in HES-III School Cadre (Men's Branch) in the grade of Rs.5500-9000 (pre-revised) plus usual allowances as sanctioned by the Haryana Government from time to time w.e.f. 01.10.2003 and posted at present place against vacant posts as per following terms and conditions:-

|Sr. No.|Name of the office and present|Date of | | |place of posting |appointment |
Sh/Smt. Masters /Mistress Distt. Ambala

1. to 16. xxxxxx xxxxxxxx xxxxxx Sh/Smt. Master/Mistress Distt. Ambala.

17. to 19 xxxxxxxx xxxxxxxx xxxxxx

20. Prem Kumar, GHS Kalpi 01.03.1995

21. to 27. xxxxxx xxxxxxxx Sh/Smt. Science Master /Mistress Distt. Ambala.

29. to 38. xxxxxxxx xxxxxxxx 1 to 4 xx xx xx

5. They are put on probation for a period of two years in the first instance from the date he joined his duty. His result will be particularly taken into consideration while assessing his performance, if in the option of the appointing authority his work and conduct has not been found satisfactory during probation period, this period is liable to be extended provided that the total period of probation including extension, if any, shall exceed 3 years or his service will be dispensed with.

6 to 9 xx xx xx”

4. After regularization of their services, the respondents submitted representations through their association and claimed that the period of ad- hoc service should be counted towards seniority because they were recruited on the basis of selection made by the District Selection Committee from among the candidates sponsored by the Employment Exchanges. The department did not accept their plea and in the provisional gradation list of the Haryana Education Service Class III, their names were shown below those who were appointed on regular basis prior to 1.10.2003.

5. The respondents challenged the provisional gradation list in Civil Writ Petition No.2409/2008 on the ground that the same was discriminatory and prayed that in view of the judgment of this Court in Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra and others (1990) 2 SCC 715, their seniority be fixed by taking into consideration the total length of service including the ad-hoc service, and until then, no one should be promoted to the post of lecturer.

6. In the written statement filed on behalf of the appellants, it was pleaded that the Provisional Gradation List was prepared in accordance with Rule 11 of the Haryana State Education School Cadre (Group 'C') Service Rules, 1998 (for short, 'the 1998 Rules') and the service rendered by the respondents before regularization cannot be taken into consideration for the purpose of fixation of seniority.

7. The Division Bench of the High Court relied upon the judgments in Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra and others (supra), Dr.Chandra Prakash v. State of U.P. (2002) 10 SCC 710, and order dated 4.7.2008 passed in C.W.P.No.7862/2006, Hanumant Singh vs. State of Haryana and others, and declared that the seniority of the respondents be fixed by taking into account their ad hoc service and, accordingly, they should be considered for promotion to the posts of lecturer.

8. Shri Neeraj Jain, learned senior counsel for the appellants referred to the provisions of the Punjab Educational Service, Class III, School Cadre Rules, 1955 (for short, 'the 1955 Rules'), as applicable to the State of Haryana, the 1998 Rules, Notification dated 28.1.1970 issued by the Governor of Haryana under Article 309 of the Constitution for creation of the Subordinate Services Selection Board (for short, 'the Board') as also Notification dated 29.6.1973, by which Clause 6 of the earlier notification was substituted, and argued that even though the respondents were appointed as Masters in different subjects and Physical Training Instructor and Hindi Teacher against the sanctioned posts after being sponsored by Employment Exchanges and on being recommended by the District Selection Committee, their seniority cannot be fixed on the basis of total length of service because their appointments were purely ad hoc and were subject to the availability of the candidates selected for regular appointment. Shri Jain pointed out that under the 1955 Rules, the Director of Education and not the District Education Officer was competent to make appointment on the posts of Masters and argued that the services rendered by the respondents on the basis of ad hoc appointments made by the District Education Officers cannot be clubbed with post regularization service for the purpose of determination of seniority. Learned senior counsel further argued that initial appointments of the respondents cannot be treated as regular because the same were not made on the recommendations of the Board constituted vide Notification dated 28.1.1970. Shri Jain pointed out that under the 1998 Rules also the appointing authority for the posts of

Masters/Mistresses is the Joint Director of Schools and not the District Education Officer and argued that the High Court committed serious error by directing fixation of the seniority of the respondents by counting their ad hoc service ignoring that their initial appointments were not made by the competent authority on the recommendations of the Board.

9. Shri P.S. Patwalia, learned senior counsel for the respondents supported the direction given by the High Court and argued that the respondents are entitled to have their seniority fixed on the basis of total length of service because they were initially appointed after following the procedure prescribed for regular recruitment. Shri Patwalia emphasized that the posts against which the respondents were appointed between 1994 and 1996 were duly sanctioned and the appointments were made by the District Education Officers from among the candidates who were sponsored by the Employment Exchanges and whose names were recommended by the District Selection Committees. Learned senior counsel argued that the use of phrase 'ad hoc' in the orders issued by the District Education Officers is not conclusive and the High Court rightly treated the respondents' initial appointment as regular for the purpose of fixation of seniority. Shri Patwalia relied upon the principles laid down by the Constitution Bench in *Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra and others* (supra), and the judgments in *State of West Bengal v. Aghore Nath* (1993) 3 SCC 371, *M.K. Shanmugan v. U.O.I.* (2000) 4 SCC 476, *Rudra Kumar Sain and others v. Union of India & others*, (2000) 8 SCC 25, *Dr. Chandra Prakash v. State of U.P.* (supra) and *S. Sumyan and others v. Limi Niri & others*, (2010) 6 SCC 791, and argued that once the ad hoc appointments of the respondents were regularized, there could be no justification to exclude their past service for the purpose of fixation of seniority.

10. We have considered the respective submissions. Rules 2(a), (e), 3, 8 and 9 of the 1955 Rules, which were applicable to the State of Haryana till the enactment of the 1998 Rules, Rules 6, 10 and 11 of the 1998 Rules and the relevant extracts of Notifications dated 28.1.1970 and 29.6.1973 issued by the Governor of Haryana under Article 309 of the Constitution, which have bearing on the decision of this appeal, are reproduced below:

THE 1955 RULES "2 (a) "The Director" means the Director of Public Instruction, Punjab for the time being.

(e) "Direct appointment" means an appointment made otherwise with by promotion within the service or by transfer of an official serving in another department of any State in India or the Government of India.

3. Authority competent to make appointment: - All appointments to posts in the service shall be made by the Director except that Divisional Inspector / Inspector of School or the Principals of Government Colleges may make any temporary or officiating appointment to a post other than that of the Headmaster or Headmistress or an Assistant District Inspector of Schools i.e., for a period not exceeding three months of any time.

8. Probation: - i) Members of the service, who are recruited directly against permanent vacancies shall be on probation in the first instance for one year.

ii) Approved officiating service shall be reckoned as period spent on probation, but no member who has officiated in any appointment for one year, may claim to be confirmed until he is appointed against a permanent vacancy.

iii) On the completion of the period of probation the Director may confirm the member in his / her appointment or if his / her work or conduct during the period of probation has been in his opinion unsatisfactory, he / she may dispense with his / her service or may extend his / her period of probation by such period as he may think fit, or reverse him / her to his her former post, if he / she has been recruited otherwise than by direct appointment, provided that the total period of probation including extensions, if any, shall not exceed three years.

iv) Services spent on deputation to a corresponding or higher post may be allowed to count towards the period of probation fixed under this rule, if there is a permanent vacancy against which such member can be confirmed.

9. Seniority of members of the services: - The Seniority inter se of members of the services holding the same class of posts and in the same/identical grades of pay shall be determined by the dates of their confirmations in such posts provided that, if two or more members are confirmed in the same class or post and in the same grades of pay on the same date, their seniority shall be determined as follows:-

a) A member appointed by promotion within the service shall be considered senior to member appointed otherwise.

b) A member appointed by transfer from another department of any Government of India shall be senior to a member recruited by direct appointment.

c) In the case of members who are appointed by promotion, seniority shall be determined according to the seniority in the appointment last held.

d) In the case of members who are recruited by transfers from other services or posts in Education Department of Government or any other Department of any government in India, seniority shall be determined according to seniority in the appointments previously held in the cadre of that service.

e) In the case of members who were both or all recruited by direct appointment and shall be determined according to the seniority before appointment and if their appointments were made on the same date, then older members shall be senior to a younger member.

f) In the case of members, who are recruited by transfer from different departments, seniority shall be determined according to the scale pay preference being given to a member who was drawing a higher rate or pay in his previous appointment and if the rate of scale of pay drawn is the same, an older member shall be senior to a younger

one.” ***** THE 1998 RULES “6(1) Appointments to the posts in the Service in case of Middle School Headmaster, Social Studies Master, Science Master, Mathematics Master, Agriculture Master, Commerce Master, Demonstrator in Physical Education (P.T. Master), Home Science Master, Art Master and Music Master shall be made by Joint Director Schools.

(2) Appointments to the posts in the Service in case of Sanskrit Teacher, Hindi Teacher, Punjabi Teacher, Physical Training Instructor, Art and Craft Teacher (Drawing Teacher), Tailoring Teacher and Tabla Player shall be made by the respective District Education Officers of the concerned district.

10 (1) Persons appointed to any post in the Service shall remain on probation for a period of two years, if appointed by direct recruitment, and one year if appointed otherwise, -- Provided that:-

(a) any period, after such appointment, spent on deputation on a corresponding or a higher post shall count towards the period of probation;

(b) any period of work in equivalent or higher rank, prior to appointment to any post in the Service, may, in the case of an appointment by transfer, at the direction of the appointing authority, be allowed to count towards the period of probation fixed under this rule; and

(c) any period of officiating appointment shall be reckoned as period spent on probation, but no person who has so officiated shall, on the completion of the prescribed period of probation; be entitled to be confirmed, unless he is appointed against a permanent vacancy.

(2) If, in the opinion of the appointing authority, the work or conduct of a person during the period of probation is not satisfactory, it may,

(a) If such person is appointed by direct recruitment, dispense with the services; and

(b) If such person is appointed otherwise, than by direct recruitment,

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(i) revert him to his former post; or

(ii) deal with him in such other manner as the terms and conditions of his previous appointment permit.

(3) On the completion of period of probation of a person, the appointing authority may:-

(a) if his work or conduct has, in its opinion, been satisfactory, -

(i) confirm such person from the date of his appointment, if appointed against a permanent vacancy; or

(ii) confirm such person from the date from which a permanent vacancy occurs, if appointed against a temporary vacancy; or

(iii) declare that he has completed his probation satisfactorily, if there is no permanent vacancy; or

(b) if his work or conduct has, in its opinion, been not satisfactory:-

(i) dispense with his service, if appointed by direct recruitment, if appointed otherwise, revert him to his former post or deal with him in such other manner as the terms and conditions of his previous appointment permit; or

(ii) extend his period of probation and thereafter pass such order, as it could have passed on the expiry of the first period of probation;

Provided that the total period of probation including extension, if any, shall not exceed three years.

11. Seniority, interse of the members of the service, shall be determined by the length of continuous service on any post in the service Provided that where there are different cadres in the Service, the seniority shall be determined separately for each cadre;

Provided further that in the case of member appointed by direct recruitment, the order of merit determined by the Commission or any other recruiting authority as the case may be, shall not be disturbed in fixing the seniority;

Provided further that in the case of two or more members appointed on the same date, their seniority shall be determined as follows:-

(a) a member appointed by direct recruitment shall be senior to member appointed by promotion or by transfer;

(b) a member appointed by promotion shall be senior to a member appointed by transfer.

(c) in the case of a member appointed by promotion or by transfer, seniority shall be determined according to the seniority of such members in the appointment from which they are promoted or transferred; and

(d) in the case of members appointed by transfer from different cadres, their seniority shall be determined according to pay, preference being given to a member, who was drawing a higher rate of pay in his previous appointment, and if the rates of pay drawn are also the same, then by the length of their service in the appointments and if the length of such service is also same, the older member shall be senior to the younger member.” NOTIFICATION DATED 28.01.1970 “GENERAL ADMINISTRATION DEPARTMENT GENERAL SERVICES NOTIFICATION The 28th January, 1970 No.523-3GS-70/2068.—In exercise of the powers conferred by Article 309 of the Constitution of India, and in modification of all other rules in this behalf, the Governor of Haryana hereby constitutes, with effect from the date of the publication of this notification, Subordinate Services Selection Board. The constitution of the Board, the terms and conditions of service of the members thereof and its functions shall be as follows:

6. Functions :- All appointments to non-gazetted Class III posts under the Haryana Government, except appointments of officers and employees of the Punjab and Haryana High Court provided for in Article 229 of the Constitution of India, shall be made on the advice of the Board.

Provided that the State Government shall be competent to exclude any such posts from the purview of the Board.” NOTIFICATION DATED 29.06.1973 “PART-III HARYANA GOVERNMENT GENERAL ADMINISTRATION DEPARTMENT Notification The 29th June, 1973 No. G.S.R.88/Const./Art.309/73.— In exercise of the powers conferred by article 309 of the Constitution of India, and all other powers enabling him in this behalf, the Governor of Haryana hereby makes further amendment in the Haryana Government, General Administration Department, General Services, Notification No.523-3GS- 70/2068, dated the 28th January, 1970.

In the said notification, for para 6, the following para shall be substituted, namely:-

“6. Functions:- The Board shall be consulted on the following matters:-

- a) appointments to Class III posts under the State Government, except appointments of officers and employees of the Punjab and Haryana High Court provided for in article 229 of the Constitution of India;
- b) promotions and transfers from one service or post to another service or post pertaining to Class III and Class IV posts;
- c) disciplinary matters pertaining to Class III and Class IV Government employees;
- d) methods of recruitment and the principles to be followed in making appointments to Class III and Class IV posts under the State Government; and

e) appointments to posts carrying an initial pay of not less than one hundred and fifty rupees per mensem and not more than three hundred and fifty rupees per mensem under a Municipal Committee, Notified Area Committee, Town Improvement Trust, Zila Parishad or Panchayat Samiti except appointment of the Executive Officer of a Municipal (Executive Officers) Act, 1931, or the Patiala Municipal (Executive Officers) Act, 2003 Bk.:

Provided that it shall not be necessary to consult the Board in respect of such posts and matters as the State Government may by notification, specify.”

11. It is not in dispute that till the framing of the 1998 Rules, appointments to the posts of Masters and Teachers were governed by the 1955 Rules. In terms of Rule 3 of the 1955 Rules, all appointments to posts in the service were required to be made by the Director with the exception that the Divisional Inspector/Inspector of the School and Principals of Government Colleges could make temporary or officiating appointment to a post other than that of the Headmaster or Headmistress or an Assistant District Inspector of Schools and the tenure of such appointment could not exceed three months. In terms of Rule 8 of the 1955 Rules, a person appointed by direct appointment was required to be placed on probation for one year in the first instance and on completion of the period of probation, the Director could confirm the probationer. If the work or conduct of the probationer was found unsatisfactory, the Director could either terminate his/her service or extend the period of probation upto a maximum period of three years. Clause 2 of Rule 8 postulated counting of officiating service as period spent on probation. The basic criteria for fixation of seniority embodied in Rule 9 was the date of confirmation.

12. Rule 6(1) of the 1998 Rules lays down that the Joint Director, Schools shall be competent to make appointment to the posts of Middle School Headmaster, Social Studies Master, Science Master, Mathematics Master, Agriculture Master, Commerce Master, Demonstrator in Physical Education (P.T. Master), Home Science Master, Art Master and Music Master.

Sub-rule (2) of Rule 6 postulates appointment on the posts of Sanskrit, Hindi and Punjabi Teacher, Physical Training Instructor, Art and Craft Teacher (Drawing Teacher), Tailoring Teacher and Tabla Player by the concerned District Education Officers. Rule 10 of the 1998 Rules is substantially similar to Rule 8 of the 1955 Rules and lays down that any person appointed by direct recruitment shall remain on probation for a period of 2 years which can be extended upto a maximum of three years. On satisfactory completion of the period of probation, the appointing authority could confirm such person from the date of occurrence of permanent vacancy and if there was no such vacancy then grant a declaration that the appointee has satisfactorily completed the period of probation. Rule 11 lays down that seniority inter se of the members of service shall be determined by the length of continuous service. Third proviso to this rule and Clauses (a) to (d) of that proviso regulate the fixation of seniority in different eventualities.

13. An analysis of Notification dated 28.1.1970 shows that the Governor of Haryana had, in exercise of the powers conferred upon him by Article 309, constituted the Board. The primary function of the Board is to give advice in the matter of appointment to all non-Gazetted Class III posts under the State Government. By Notification dated 29.6.1973, the scope of the Board's functions was enlarged and consultation with the Board was made mandatory in the matters of promotion to Class III posts under the State Government; promotions and transfers from one service or post to another service or post pertaining to Class III and Class IV, disciplinary matters pertaining to Class III and Class IV employees, methods of recruitment and the principles to be followed in making appointments to Class III and Class IV posts, etc. By virtue of proviso to the amended Clause 6, the State Government is empowered to issue notification to dispense with the requirement of consultation with the Board in respect of such posts and matters as may be specified therein.

14. We shall now consider whether the respondents were regularly appointed as Masters, Physical Training Instructor and Hindi Teacher between 1994 and 1996, whether the competent authority should have taken into consideration their total length of service for the purpose of fixation of seniority and whether the High Court rightly applied the ratio of the judgments of this Court in *Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra (supra)* and *Dr. Chandra Prakash v. State of U.P. (supra)* for the purpose of directing refixation of the respondents' seniority.

15. A reading of order dated 16.10.1995 issued by District Education Officer, Panipat makes it crystal clear that even though respondent No.1 – Vijay Singh was appointed as Science Master on the recommendations of the District Level Committee, his appointment was purely ad hoc with a tenure of six months or till the availability of a candidate for regular appointment, whichever was earlier. The other respondents were appointed in the same manner with similar stipulation. The reason why the respondents were appointed on purely ad-hoc basis is not far to seek. The concerned District Education Officers did send requisitions to the Employment Exchanges and appointments were made on the recommendations of the District Level Committee but all this was not in consonance with the mandate of the 1955 Rules and Notifications dated 28.1.1970 and 29.6.1973. At the cost of repetition, we deem it proper to mention that in terms of Rule 3 of the 1955 Rules, only the Director was competent to make appointments on the posts to which those rules were applicable with the exception that Divisional Inspector/Inspector of School or the Principals of Government Colleges could make temporary or officiating appointments on certain posts for a maximum period of three months. After the Board was constituted vide Notification dated 28.1.1970, the Director could make appointment only on the recommendation of the Board unless the State Government was to issue notification under proviso to Clause 6 of Notification dated 29.6.1973. In terms of Rule 8 of the 1955 Rules, every person appointed by direct recruitment was required to be placed on probation for a period of one year. The respondents were neither appointed by the Director on the recommendations of the Board nor they were placed on probation. As a matter of fact, they were appointed on purely ad hoc basis without following the procedure prescribed for regular appointment. Therefore, the mere fact that the ad hoc appointments of the respondents were preceded by sending requisitions to the Employment Exchanges and recommendations by the District Selection Committee cannot lead to an inference that they were appointed on regular basis.

16. It was neither the pleaded case of the respondents nor any document was produced before the High Court to show that the State Government had amended the 1955 Rules and empowered the District Education Officer to make appointment on the posts of Masters, Physical Training Instructor and Hindi Teacher or the requirement of consultation with the Board was dispensed with by issuing notification under proviso to Clause 6 of Notification dated 29.6.1973. Unfortunately, the High Court overlooked the fact that the respondents were neither appointed by the competent authority on the recommendations made by the Board nor they were placed on probation. Therefore, the conclusion recorded by the High Court that the respondents' initial appointments were regular and, therefore, ad hoc service was liable to be counted for the purpose of fixation of seniority is legally unsustainable.

17. The issue relating to fixation of seniority deserves to be considered from another angle. In terms of Rule 9 of the 1955 Rules, the seniority inter se of members of the service holding the same class of posts and in the same/identical grades of pay is required to be determined by the dates of their confirmation. Rule 11 of the 1998 Rules lays down that seniority inter se of members of the service shall be determined by the length of continuous service on any post. The respondents were appointed on purely ad hoc basis for six months and they continued to serve as ad hoc Masters, Physical Training Instructor and Hindi Teacher till the regularization of their service w.e.f. 1.10.2003. Therefore, their seniority could not be fixed either under Rule 9 of the 1955 Rules or Rule 11 of the 1998 Rules by counting their service from the date of initial appointments.

18. Before concluding, we consider it proper to notice the judgments on which reliance has been placed by learned counsel for the respondents. This consideration needs to be prefaced with an observation that the cases in which recruitment and conditions of service including seniority are regulated by the law enacted by Parliament or the State Legislature or the rules framed under Article 309 of the Constitution, the general proposition laid down in any judgment cannot be applied dehors the relevant statutory provisions and dispute relating to seniority has to be resolved keeping in view such provisions.

19. In *Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra & others* (supra), the Constitution Bench considered the dispute of seniority between the direct recruits and the promotees in the light of the provisions contained in the Bombay Service of Engineers (Class I and Class II) Recruitment Rules, 1960, the Bombay Service of Engineers (Class I and Class II) Recruitment Rules, 1970, the Reorganised Bombay State Overseers and Deputy Engineers Seniority Lists Rules, 1978, the Reorganised Bombay State Assistant Engineers and Executive Engineers Seniority Lists Rules, 1981, the Maharashtra Service of Engineers (Regulation of Seniority and Preparation and Revision of Seniority Lists for Specified Period) Rules, 1982, etc. After examining the relevant rules, the Court culled out the following propositions:

“(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 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.

(I) The posts held by the permanent Deputy Engineers as well as the officiating Deputy Engineers under the State of Maharashtra belonged to the single cadre of Deputy Engineers.

(J) The decision dealing with important questions concerning a particular service given after careful consideration should be respected rather than scrutinised for finding out any possible error.

It is not in the interest of Service to unsettle a settled position.”

20. In *State of West Bengal v. Aghore Nath* (supra), the three Judge Bench considered an apparent contradiction in conclusions (A) and (B) in the judgment of the Constitution Bench, and observed:

“22. There can be no doubt that these two conclusions have to be read harmoniously, and conclusion (B) can not cover cases which are expressly excluded by conclusion (A). We may, therefore, first refer to conclusion (A). It is clear from conclusion (A) that to enable seniority to be counted from the date of initial appointment and not according to the date of confirmation, the incumbent of the post has to be initially appointed, according to rules. The corollary set out in conclusion (A), then 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 posts cannot be taken into account for considering the seniority. Thus, the corollary in conclusion (A) expressly excludes the category of cases where the initial appointment is only ad hoc and not according to rules, being made only as a stop-gap arrangement. The case of the writ petitioners squarely falls within this corollary in conclusion (A), which says that the officiation in such posts cannot be taken into account for counting the seniority.” “25. In our opinion the conclusion (B) was added to cover over a different kind of situation, wherein the appointments are otherwise regular, except for the deficiency of certain procedural requirements laid down by the rules. This is clear from the opening words of the conclusion (B), namely, 'if the initial appointment is not made by following the procedure laid down by the rules' and the later expression 'till the regularisation of his service in accordance with the rules'. We read conclusion (B), and it must be so read to reconcile with conclusion (A), to cover the cases where the initial appointment is made against an existing vacancy, not limited to a fixed period of time or purpose by the appointment order itself, and is made subject to the deficiency in the procedural requirements prescribed by the rules for adjudging suitability of the appointee for the post being cured at the time of regularisation, the appointee being eligible and qualified in every manner for a regular appointment on the date of initial appointment in such cases. Decision about the nature of the appointment, for determining whether it falls in this category, has to be made on the basis of the terms of the initial appointment itself and the provisions in the rules. In such cases, the deficiency in the procedural requirements laid down by the rules has to be cured at the first available opportunity, without any default of the employee, and the appointee must continue in the post uninterruptedly till the regularization of his service, in accordance with the rules. In such cases, the appointee is not to blame for the deficiency in the procedural requirements under the rules at the time of his initial appointment, and the appointment not-being limited to a fixed period of time is intended to be a regular appointment, subject to the remaining procedural requirements of the rules being fulfilled at the earliest. In such cases also, if there be any delay in curing the defects on account of any fault of the appointee, the appointee would not get the full benefit of the earlier period on account of his default, the benefit being confined only to the period for which he is not to blame. This category of cases is different from those covered by the corollary in conclusion (A) which relates to appointment only on ad hoc basis as a stop-gap arrangement and not

according to rules. It is, therefore, not correct to say, that the present cases can fall within the ambit of conclusion (B), even though they are squarely covered by the corollary in conclusion (A).”

21. In *M.K. Shanmugam v. U.O.I. (supra)*, another three Judge Bench referred to the aforementioned two judgments and observed:

“If the adhoc selection is followed by regular selection, then the benefit of ad hoc service is not admissible if ad hoc appointment is in violation of the rules. If the ad hoc appointment has been made as a stopgap arrangement and where there was a procedural irregularity in making appointments according to rules and that irregularity was subsequently rectified, the principle to be applied in that case was stated once again. There is difficulty in the way of the appellants to fight out their case for seniority should be reckoned by reason of the length of the service whether ad hoc or otherwise inasmuch as they had not been recruited regularly. As stated earlier, the appellants were regularly found fit for promotion only in the year 1977 and if that period is reckoned their cases could not be considered as found by the Tribunal. The view expressed by this Court in these cases have been again considered in the decisions in *Anuradha Bodi (Dr) v. Municipal Corporation of Delhi* (1998) 5 SCC 292, *Keshav Deo v. State of U.P.*, (1999) 1 SCC 280, *Major Yogendra Narain Yadav v. Bindeshwar Prasad*, (1997) 2 SCC 150, *I.K. Sukhija v. Union of India*, (1997) 6 SCC 406, and *Govt. of A.P. v. Y. Sagaraswara Rao*, 1995 Supp (1) SCC 16, but all these decisions do not point out that in case the promotions had been made ad hoc and they are subsequently regularized in the service in all the cases, ad hoc service should be reckoned for the purpose of seniority. It is only in those cases where initially they had been recruited even though they have been appointed ad hoc the recruitment was subject to the same process as it had been done in the case of regular appointment and that the same was not a stopgap arrangement.”

22. In *State of Haryana v. Haryana Veterinary & AHTS Association and another* (2000) 8 SCC 4, the three Judge Bench considered the question whether the ad hoc service rendered by the respondents in the cadre of Assistant Engineers can be added to their regular service for the purpose of higher pay scale. While reversing the judgment of the majority of the Full Bench which had ruled in favour of the writ petitioner and declared that ad hoc service was to be clubbed with the regular service for the purpose of grant of financial benefits, this Court held:

“A combined reading of the aforesaid provisions of the Recruitment Rules puts the controversy beyond any doubt and the only conclusion which could be drawn from the aforesaid Rules is that the services rendered either on an ad hoc basis or as a stopgap arrangement, as in the case in hand from 1980 to 1982 cannot be held to be regular service for getting the benefits of the revised scale of pay or of the selection grade under the government memorandum dated 2- 6-1989 and 16-5-1990, and therefore, the majority judgment of the High Court must be held to be contrary to the aforesaid provisions of the Recruitment Rules, consequently cannot be sustained.

The initial letter of appointment dated 6-12-1979 pursuant to which respondent Rakesh Kumar joined as an Assistant Engineer on an ad hoc basis in 1980 was also placed before us. The said appointment letter unequivocally indicates that the offer of appointment as Assistant Engineer was on ad hoc basis and clauses 1 to 4 of the said letter further provides that the appointment will be on an ad hoc basis for a period of 6 months from the date of joining and the salary was a fixed salary of Rs.400 p.m. in the scale of Rs.400 to Rs.1100 and the services were liable to be terminated without any notice and at any time without assigning any reason and that the appointment will not enable the appointee any seniority or any other benefit under the Service Rules for the time being in force and will not count towards increment in the time scale. In view of the aforesaid stipulations in the offer of appointment itself we really fail to understand as to how the aforesaid period of service rendered on ad hoc basis can be held to be service on regular basis. The conclusion of the high Court is contrary to the very terms and conditions stipulated in the offer of appointment and, therefore, the same cannot be sustained.”

23. In *Dr. Chandra Prakash v. State of U.P.* (supra), the Court interpreted the U.P. Medical Service (Men’s Branch) Rules, 1945, U.P. Medical Services (Men’s Branch) (Amendment) Rules, 1981, U.P. Regularisation of Ad Hoc Appointments (on Posts within the Purview of the Public Service Commission) Rules, 1979 and held that the appellants who had been appointed against substantive vacancies and were continuing from 1965- 1976 to 1983 and were enjoying all the benefits of regular service are entitled to seniority from the date of initial appointment. The Court also observed that the ‘rule of seniority’ had been interpreted by the Court for a long period of time and it would not be proper to upset the principles laid down in other judgments.

24. None of the aforesaid judgments can be read as laying down a proposition of law that a person who is appointed on purely ad hoc basis for a fixed period by an authority other than the one who is competent to make regular appointment to the service and such appointment is not made by the specified recruiting agency is entitled to have his ad hoc service counted for the purpose of fixation of seniority. Therefore, the respondents, who were appointed as Masters in different subjects, Physical Training Instructor and Hindi Teacher on purely ad hoc basis without following the procedure prescribed under the 1955 Rules are not entitled to have their seniority fixed on the basis of total length of service. As a corollary to this, we hold that the direction given by the High Court for refixation of the respondents’ seniority by counting the ad hoc service cannot be approved.

25. In the result, the appeal is allowed, the impugned order is set aside and the writ petition filed by the respondents is dismissed. The parties are left to bear their own costs.

.....J. [G.S. Singhvi]J. [Sudhansu Jyoti Mukhopadhyaya] New Delhi, August 22, 2012.