

Rashi Mani Mishra vs The State Of U.P. Rural Engineering ... on 28 July, 2021

Author: M.R. Shah

Bench: M.R. Shah, Dhananjaya Y. Chandrachud

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 10788 OF 2016

Rashi Mani Mishra and others

...Appellants

Versus

State of Uttar Pradesh and others

...Respondents

WITH

CIVIL APPEAL NO. 2898 OF 2021
(Arising out of SLP(C) No.32631/2018)
CIVIL APPEAL NO. 4427 OF 2021
(Arising out of SLP(C) No.29294/2018)
CIVIL APPEAL NO. 4428 OF 2021
(Arising out of SLP(C) No.682/2019)
CIVIL APPEAL NO. 4429 OF 2021
(Arising out of SLP(C) No.926/2019)

JUDGMENT

M.R. SHAH, J.

1. As common question of law and facts arise in this group of appeals, all these appeals are decided and disposed of together by this common judgment and order.

1.1 Civil Appeal Nos. 10788 of 2016 and Civil Appeal No. 2898 of 2021 are with respect to the State of Uttar Pradesh and the rest of the civil appeals are with respect to the State of Uttarakhand. It is to be noted that the relevant rules applicable to the employees of the State of Uttarakhand are as such para materia to the relevant rules applicable to the employees of the State of Uttar Pradesh.

1.2 The dispute in all these appeals relates to determination of the seniority of Assistant Engineers working in the Rural Engineering Department and the common question involved in the present

group of appeals is, whether the services rendered as ad hoc prior to their regularisation shall be counted for the purpose of seniority etc. or only from the date of their regularisation, regularising their services as per the relevant regularisation rules?

1.3 At the outset, it is required to be noted that as such the High Courts have heavily relied upon the decision of this Court in the case of Secretary, Minor Irrigation Department v. Narendra Kumar Tripathi, reported in (2015) 11 SCC 80 and have held that services rendered by the respective Assistant Engineers as ad hoc shall also be counted for the purpose of seniority, meaning thereby their seniority should be considered from the date of their initial appointment as ad hoc. The decision of this Court in the case of Narendra Kumar Tripathi (supra) shall be dealt with hereinbelow.

Factual Matrix:

2. For the sake of convenience, Civil Appeal No. 10788 of 2016 is treated as a lead matter and the facts from the said civil appeal are narrated and considered for the purpose of deciding these appeals. 2.1 108 Assistant Engineers were given ad hoc appointments in the year 1985 after an advertisement had been issued. Their services were subsequently regularised on 14.12.1989 under the provisions of the Uttar Pradesh Regularisation of Ad hoc Appointments (on posts within the purview of the Public Service Commission) (Second Amendment) Rules, 1989 (hereinafter referred to as the '1989 Rules'). At this stage, it is required to be noted that earlier the regularisation of ad hoc appointments was as per the Uttar Pradesh Regularisation of Ad hoc Appointments (on posts within the purview of the Public Service Commission) Rules, 1979 (hereinafter referred to as the '1979 Rules'), which came to be subsequently extended from time to time. Therefore, for all practical purposes, the respective ad hoc employees were governed by the 1979 Rules, which came to be extended by the 1989 Rules. A final seniority list was prepared on 14.12.2001. The services rendered by such Assistant Engineers on ad hoc basis were not counted for seniority purposes and their seniority was determined from the date of their regularisation on 14.12.1989.

2.2 One Narendra Kumar Tripathi filed the petition even before the declaration of the final seniority list challenging the order rejecting his representation and according to him services rendered by him as ad hoc prior to 14.12.1989 shall also be counted for the purpose of seniority. The final seniority list dated 14.12.2001 was also challenged in various writ petitions. Writ Petition filed by Narendra Kumar Tripathi (first case) came to be allowed by the High Court and a direction was issued to fix his seniority from the date of his initial appointment in the Work Charge Establishment of the department on 18.01.1983. At this stage, it is required to be noted that initially Narendra Kumar Tripathi was working in the department on work charge basis from 18.01.1983 before he was given an ad hoc appointment on 12.06.1985. As observed hereinabove, various other writ petitions were also filed challenging the final seniority list dated 14.12.2001.

2.3 A Division Bench of the High Court of Judicature at Allahabad, vide judgment and order dated 27.02.2004, in the case of Arjun Ravi Das filed by ad hoc Assistant Engineers for counting their services rendered on ad hoc basis prior to regularisation in 1989 for the purpose of seniority, dismissed the writ petition. Thereafter, several other writ petitions including the writ petition by

Narendra Kumar Tripathi (second case) were filed and finding a conflict between the two Division Benches, in Narendra Kumar Tripathi (first case) and Arjun Ravi Das, the writ petitions were referred to a Full Bench. The issue before the Full Bench was as to whether the services rendered on ad hoc basis prior to regularisation should be counted for determining the seniority. The Full Bench observed that ad hoc services rendered after appointment made de hors the rules and without following any procedure prescribed by law cannot be counted for the purpose of seniority, after having noted that the services of such ad hoc Assistant Engineers appointed in 1985 were subsequently regularised by order dated 14.12.1989 and a final seniority list was prepared on 14.12.2001 which did not count the services rendered by the Assistant Engineers on ad hoc basis. Thereafter, the Full Bench dismissed all the petitions holding that the ad hoc services rendered prior to regularisation should not be counted for the purpose of seniority. The seniority list was therefore not disturbed by the Full Bench.

2.4 Thereafter, Narendra Kumar Tripathi filed a Special Leave Petition before this Court against the judgment rendered by the Full Bench on 10.12.2004. The Secretary, Minor Irrigation Department also filed a Special Leave Petition against the judgment rendered on 13.02.2003 in Narendra Kumar Tripathi (first case), taking the view that his seniority shall be counted from the date of his initial appointment in the Work Charge Establishment of department on 18.01.1983. The Special Leave Petitions were subsequently re-numbered as Civil Appeal Nos. 3348/2015 and 3349/2015 respectively. Before this Court, a submission was made on behalf of Narendra Kumar Tripathi that his seniority may be counted from 12.06.1985 and not from 18.01.1983 when he was appointed on work charge basis.

2.5 By judgment and order dated 7.4.2015, a two Judge Bench of this Court allowed the appeal preferred by Narendra Kumar Tripathi (supra) and set aside the judgment and order passed by the Full Bench of the High Court and held that services rendered by Assistant Engineers as ad hoc shall be counted for the purpose of seniority and their seniority should be counted from the date of their initial appointment and not from the date of regularisation of their services, as per the 1979 Rules/1989 Rules. This Court directed the State to redetermine the seniority after hearing the affected parties within six months. At this stage, it is required to be noted that this Court also made it clear that benefit of re-determination of seniority at this stage will not disturb holding of posts by any incumbent and except for the benefit in pension other benefits to which the writ petitioner may be found entitled will be given only on notional basis (paragraph 17 of the said judgment).

2.6 That thereafter, pursuant to the directions issued by this Court in the case of Narendra Kumar Tripathi (supra), the State Government issued an office order dated 31.12.2015 notifying the tentative seniority list and requiring all concerned to file objections, if any, within 15 days. That thereafter, after considering the objections filed, a final seniority list was published on 22.03.2016. The writ petitioners before the High Court were the candidates, who were at serial nos. 106, 109, 107, 122 & 108 in the seniority list dated 14.12.2001 and who were downgraded and placed at serial nos. 260, 208, 261, 274 & 262 in the seniority list dated 22.03.2016. Therefore, the appellants herein – original writ petitioners filed writ petition before the High Court praying for setting aside the seniority list dated 22.03.2016 and for reviving the earlier seniority list dated 14.12.2001. Mainly relying upon and following the decision of this Court in the case of Narendra Kumar Tripathi

(supra), by the impugned judgment and order, the High Court has dismissed the writ petition, which has given rise to Civil Appeal No. 10788 of 2016. A similar view has been taken by the High Court of Judicature at Allahabad in the case of Brijesh Kumar Dubey, appellant in Civil Appeal No. 2898/2021 and by the High Court of Uttarakhand in the cases of Navin @ Naveen Chandra, Rakesh Kumar Tilara and others and Ramji Lal and others, appellant and respondents in Civil Appeal Nos. 4427, 4428 and 4429 of 2021 respectively.

2.7 Therefore, the short question which is posed for the consideration of this Court is, whether the services rendered by the Assistant Engineers as ad hoc should be counted for the purpose of seniority or their seniority shall be counted from the date of their regularisation. In other words, the question posed for the consideration is, whether their services shall be counted from the date of their initial appointments as ad hoc and the service rendered as ad hoc prior to regularisation is to be counted for the purpose of seniority or not?

Submissions/Arguments:

3. S/Shri Anil Kumar Sangal and Rishabh Sancheti, learned Advocates have appeared on behalf of the respective appellants – original writ petitioners. Dr. Rajiv Nanda and Ms. Vanshaja Shukla, learned Advocates have appeared on behalf of the State of Uttarakhand. Shri Tanmaya Agarwal, learned Advocate has appeared on behalf of the State of Uttar Pradesh and Shri Manoj Swarup, learned Senior Advocate, along with other learned Advocates, have appeared on behalf of the contesting respondents.

3.1 Learned counsel appearing on behalf of the respective appellants – original writ petitioners have vehemently submitted that the respective High Courts have clearly erred in relying upon and following the decision of this Court in the case of Narendra Kumar Tripathi (supra). 3.2 Shri Anil Kumar Sangal, learned Advocate appearing on behalf of the appellants – original writ petitioners has made the following submissions:

i) that the decision of this Court in the case of Narendra Kumar Tripathi (supra), which has been relied upon and followed by the respective High Courts is a decision per incuriam;

ii) that in the case of Narendra Kumar Tripathi (supra), a two Judge Bench of this Court did not consider the earlier binding decisions of this Court, taking the view that seniority of ad hoc appointees is to be reckoned from the date of their substantive appointments and that ad hoc services cannot be counted for the purpose of seniority;

iii) that the binding decisions of this Court in the case of Santosh Kumar and others v. G.R. Chawla and others, reported in (2003) 10 SCC 513 and another decision of this Court in the case of State of Uttarakhand v. Archana Shukla, reported in (2011) 15 SCC 194, interpreting the very 1979 Rules and taking the view that the services rendered as ad hoc and prior to their regularisation as per the 1979 Rules shall not be

counted for the purpose of seniority were not brought to the notice of this Court;

iv) that in the case of Narendra Kumar Tripathi (supra), this Court did not even take into consideration the entire/whole Rule 7 of the 1979 Rules. It is submitted that as per Rule 7 of the 1979 Rules, which were subsequently extended in 1989, under which the contesting respondents came to be regularised specifically mentions that “a person appointed under the 1979 Rules shall be entitled to seniority only from the date of order of appointment after selection in accordance with the said 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 to the appointment of such persons”.

It is submitted that this Court in Narendra Kumar Tripathi (supra) considered Rule 7 only up to the wording, “date of order of appointment”, however, did not consider the entire Rule 7 which specifically provides that 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. It is submitted that if the aforesaid entire/whole rule 7 would have been considered, in that case, the result would have been different;

v) that in any case a binding decision of this Court in the case of Santosh Kumar and others (supra), interpreting the very 1979 Rules and taking the view that seniority of ad hoc appointees is to be reckoned from the date of their substantive appointments and that ad hoc appointments cannot be deemed to be “substantive appointments” and that such appointees are to be placed below the direct recruits appointed prior to their regularisation was not brought to the notice of this Court in the case of Narendra Kumar Tripathi (supra) and therefore the decision in the said case is a decision per incuriam. It is submitted that in the case of Santosh Kumar and others (supra), this Court also considered the Constitution Bench decision of this Court in the case of Direct Recruit Class II Engg. Officers’ Assn. v. State of Maharashtra, reported in (1990) 2 SCC 715, which came to be considered by this Court in the case of Narendra Kumar Tripathi (supra), while taking a contrary view than the view taken in the case of Santosh Kumar and others (supra);

vi) that in many earlier decisions, this Court including the three Judge Benches have consistently taken the view that period of ad hoc service cannot be reckoned for the purposes of seniority, where initial appointment is only ad hoc and not according to the rules. Reliance is placed upon the decisions of this Court in the cases of Debabrata Dash v. Jatindra Pradsad Das, reported in (2013) 3 SCC 658 (three Judge Bench); P.P.C. Rawani (Dr.) and others v. Union of India, reported in (2008) 15 SCC 332 (three Judge Bench); R.K. Mobisana Singh v. Kh. Temba Singh, reported in (2008) 1 SCC 747; Santosh Kumar and others (supra); Union of India v. Satish Chandra Mathur, reported in (2001) 10 SCC 185; Keshav Chandra Joshi v. Union of India, reported in 1992 Supp. (1) SCC 272 (three Judge Bench); and P.D. Aggarwal v. State of U.P., reported in (1987) 3 SCC 622. It is submitted that none of the aforesaid decisions have been considered by this Court in the case of Narendra Kumar Tripathi (supra) and therefore also the decision in the said case is per incuriam;

vii) that even otherwise and in the facts and circumstances of the case, the services rendered as ad hoc and prior to regularisation are not required to be counted for the purpose of seniority. It is submitted that the private contesting respondents herein were appointed as Assistant Engineers in the year 1985 on ad hoc basis vide office memo dated 12.06.1985 on the basis of recommendations of the Selection Committee constituted for ad hoc appointments; that they were appointed on ad hoc basis on the temporary posts of Assistant Engineers in Rural Engineering Service Department; that in the appointment order itself it was specifically mentioned that the candidates will have no right to claim seniority in future on the basis of the date of this order of appointment (paragraph 2 of the office memo). It is submitted that thereafter their services came to be regularised as per the 1979 Rules/1989 Rules, vide notification/appointment order dated 23.02.1989. It is submitted that even in the said notification/appointment order, it was specifically observed that in Rural Engineering Service, the service rule of the Assistant Engineer has not been framed till date and therefore the continuation shall be made under the General Rules framed by the Personal Department and in the cadre of Assistant Engineer Civil, the seniority along with the other officers shall be fixed later on. It is submitted that the relevant 1979 Rules/1989 Rules under which their services were regularised specifically provided that a person appointed under the 1979 Rules shall be entitled to seniority from the date of order of appointment after selection in accordance with these rules, i.e., the 1979 Rules. It is submitted that as per the 1979 Rules/1989 Rules, the services of the ad hoc appointees were required to be regularised after following due procedure as per the 1979 Rules and only after the Selection Committee considers the cases of ad hoc appointees. It is submitted that only thereafter and after their names are cleared by the Selection Committee constituted specifically under the 1979 Rules, “Substantive Appointments” are made;

viii) that thereafter the State Government framed the U.P. Government Servants Seniority Rules, 1991 (hereinafter referred to as the ‘1991 Rules’) and as per the said rules, the seniority shall be determined from the date of their “substantive appointments”. It is submitted that the “substantive appointments” has been defined under the 1991 Rules and means, an appointment not being an ad hoc appointment on a post in the cadre of service made after selection in accordance with the service rules relating to that service. It is submitted that thereafter the State Government framed the Uttar Pradesh Rural Engineering (Group ‘B’) Service Rules, 1993 (hereinafter referred to as the ‘1993 Rules’), which govern the appellants – Assistant Engineers in Rural Engineering. The 1993 Rules which include the Assistant Engineers and even as per the said rules “substantive appointments” means an appointment not being an ad hoc appointment, on a post in the cadre of service made after selection in accordance with the rules and if there were no rules, in accordance with the procedure prescribed for the time being by executive instructions issued by the government. It is submitted that as per the said 1993 Rules, “member of service” means a person substantively appointed under the said rules or the orders prior to the commencement of the said rules to a post in the cadre of service. It is submitted that as per the 1993 Rules, as per clause 21, the seniority of the persons substantively appointed in the posts shall be determined in accordance with the 1991 Rules, as amended from time to time;

ix) that on a conjoint reading of the aforesaid rules, it can be seen that services rendered as ad hoc cannot be considered as “substantive appointments” and on regularisation of their services under the 1979 Rules/1989 Rules after they were selected by the Selection Committee under the 1979

Rules, their appointment can be said to be “substantive appointments” and therefore their seniority is to be counted only from the date of their substantive appointments, i.e., regularisation under the 1979 Rules/1989 Rules. It is submitted that even the Seniority Rules, 1991, Service Rules, 1993 were also not placed before this Court for consideration when this Court decided Narendra Kumar Tripathi (supra). It is submitted that even the appellants – original writ petitioners were not before this Court and/or were not heard when this Court decided Narendra Kumar Tripathi (supra);

x) that even as observed in paragraph 17 of the judgment in the case of Narendra Kumar Tripathi (supra), the benefit of re-determination of the seniority will not disturb holding of the posts by any incumbent. It is submitted that by re-determination of the seniority as per Narendra Kumar Tripathi (supra), the appellants herein – original writ petitioners are pushed below in the seniority list from serial nos. 106, 109, 107, 122 & 108 to serial nos. 260, 208, 261, 274 & 262. It is submitted therefore also the subsequent re-determination of the seniority list in the year 2016 which was under challenge before the High Court is contrary to the observations made by this Court in paragraph 17 in Narendra Kumar Tripathi (supra);

xi) Making the above submissions, it is prayed to hold that in the facts and circumstances of the case and considering the relevant rules the seniority of ad hoc appointees as Assistant Engineers shall be counted only from the date of their regularisation of service as per the 1979 Rules/1989 Rules and their initial service prior to their regularisation is not to be counted for the purpose of seniority, by holding that only on regularisation of their services as per the 1979 Rules/1989 Rules, they can be said to have been appointed on “substantive posts”. 3.3 Dr. Rajiv Nanda and Ms. Vanshaja Shukla, learned Advocates appearing on behalf of the State of Uttarakhand have fully supported the appellants – original writ petitioners and have submitted that considering the applicable relevant rules and more particularly when the ad hoc appointees’ services were regularised as per the 1979 Rules/1989 Rules, which specifically provide that the services rendered as ad hoc shall not be counted for the purpose of seniority and the earlier binding decisions of this Court interpreting the very Rules 1979 were not brought to the notice of this Court when this Court decided Narendra Kumar Tripathi (supra)., it is submitted that the services of the ad hoc Assistant Engineers are to be counted for the purpose of their seniority only from the date of their regularisation in the year 1989 and not from the date of their initial appointment in the year 1985. 3.4 Shri Tanmaya Agarwal, learned Advocate appearing on behalf of the State of Uttar Pradesh has, as such, not taken any specific stand and has submitted that ultimately it is left to the Court. However, has submitted that the State of Uttar Pradesh has redetermined the seniority in the year 2016 as per the directions issued by this Court in the case of Narendra Kumar Tripathi (supra).

4. Shri Manoj Swarup, learned Senior Advocate appearing on behalf of some of the contesting respondents – ad hoc appointees has vehemently submitted that in the present case re-determination of the seniority is pursuant to the directions issued by this Court in the case of Narendra Kumar Tripathi (supra) and therefore no error has been committed by the respective States in re-determining the seniority list counting the services rendered by ad hoc appointees prior to their regularisation. It is submitted that the seniority list has been re- determined considering the services rendered by the ad hoc appointees from the date of their initial appointments. It is submitted that in the case of Narendra Kumar Tripathi (supra), the very 1979 Rules came to be

interpreted and considered by a two Judge Bench of this Court and therefore the issue has attained finality. It is further submitted that while deciding the case in the case of Narendra Kumar Tripathi (supra), this Court considered two earlier binding decisions of this Court in the case of Direct Recruit Class II Engg. Officers' Assn. (supra) and Rudra Kumar Sain v. Union of India, reported in (2000) 8 SCC 25, taking the view that the services rendered as ad hoc are to be counted/considered for the purpose of seniority. It is submitted that in the case of Direct Recruit Class II Engg. Officers' Assn.(supra), a Constitution Bench of this Court held that 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. It is submitted that in the case of Rudra Kumar Sain (supra), another Constitution Bench of this Court observed and held that appointment of employee possessing statutory qualifications to the promotional post after due consultation with or approval of, the competent authority, though initially ad hoc, cannot be ignored in computing the length of service for determining inter se seniority between such promotees and direct recruits. It is submitted that in the case of Rudra Kumar Sain (supra), this Court interpreted the appointment as "ad hoc/fortuitous/stopgap" and thereafter observed and held as above. It is submitted that while deciding Narendra Kumar Tripathi (supra), this Court considered the aforesaid two decisions and also interpreted and considered the very 1979 Rules. It is submitted that in the present case when the contesting respondents – ad hoc appointees were appointed in the year 1985, they were appointed after due selection by the duly constituted Selection Committee. It is submitted that therefore services rendered by them as ad hoc are to be counted for the purpose of seniority.

4.1 Shri Manoj Swarup, learned Senior Advocate has also heavily relied upon the decision of this Court in the case of Dr. Chandra Prakash and others v. State of U.P., reported in (2002) 10 SCC 710. It is submitted that in the aforesaid decision in the case of Dr. Chandra Prakash (supra), it is specifically observed and held that service rendered as temporary is to be considered for the purpose of seniority. Therefore, heavy reliance is placed upon the decision of this Court in the case of Dr. Chandra Praksh (supra).

4.2 Shri Manoj Swarup, learned Senior Advocate has also relied upon the decision of this Court in the case of State of West Bengal v. Aghore Nath Dey, reported in (1993) 3 SCC 371.

4.3 Now so far as the reliance placed upon the observations made in paragraph 17 in the case of Narendra Kumar Tripathi (supra) that the benefit of the redetermination of the seniority will not disturb holding of posts by any incumbent, it is submitted that in the present case while re-determining the seniority in the year 2016 pursuant to the directions issued by this Court in the case of Narendra Kumar Tripathi (supra), holding of the posts by none of the appellants shall be disturbed. It is submitted that pushing down in the seniority list is the necessary consequence of re-determination of the seniority counting the services rendered by ad hoc appointees from the date of their initial appointments.

4.4 Making the above submissions and heavily relying upon the decisions of this Court in the case of Narendra Kumar Tripathi (supra) and the earlier decision of this Court in the case of Dr. Chandra Prakash (supra), it is prayed to dismiss the present appeals. 4.5 The other learned Advocates appearing on behalf of the contesting respondents in other appeals have fully supported the

submissions made by Shri Manoj Swarup, learned Senior Advocate.

Consideration:

5. We have heard the learned counsel for the respective parties at length.

At the outset, it is required to be noted that in the present case, the seniority has been re-determined pursuant to the directions issued by this Court in the case of Narendra Kumar Tripathi (supra). In the case of Narendrakumar Tripathi (supra), this Court after considering the very 1979 Rules held that the services rendered by ad hoc appointees prior to their regularisation and services rendered by them from the date of their initial appointments is to be counted for the purpose of seniority. It is not in dispute that in the impugned judgments and orders, the respective High Courts have solely followed the decision of this Court in the case of Narendrakumar Tripathi (supra). However, it is required to be noted that earlier to the decision of this Court in the case of Narendrakumar Tripathi (supra), there were two binding decisions of this Court interpreting the very Rules 1979 in the cases of Santosh Kumar (supra) and Archana Shukla (supra), under which the services of the ad hoc appointees – private respondents herein are regularised. In the case of Santosh Kumar (supra), interpreting the very U.P. Regularisation of Ad hoc Appointments (on posts within the purview of the Public Service Commission) Rules, 1979, a two Judge Bench of this Court observed and held that the seniority of ad hoc appointees to be reckoned from the date of their “substantive appointments” and ad hoc appointments cannot be deemed to be “substantive appointments” and hence such appointees to be placed below the direct recruits appointed prior to their regularisation. In the case of Santosh Kumar (supra), this Court interpreted the very Rule 7 of the 1979 Rules. This Court also considered the decision of this Court in the case of Direct Recruit Class II Engg. Officers’ Assn. (supra), considered by this Court in the case of Narendrakumar Tripathi (supra). In the case of Santosh Kumar (supra), the High Court considered Seniority Rules, 1991 (which shall be discussed hereinbelow) and the High Court took the view that rule of seniority clearly provides that seniority in any category or cadre post shall be determined from the date of the order of “substantive appointment”. Subsequently, in the case of Archana Shukla (supra), while interpreting the *pari materia* rules applicable to the State of Uttarakhand, it is observed and held that ad hoc appointees whose services were regularised subsequently are not entitled to the benefit of their service under rule 7 from 1988 to 2004 (as ad hoc appointees) for the purpose of seniority. In the said decision, the Drug Inspectors were initially appointed as ad hoc in the year 1988 and thereafter they were regularised in the year 2004 under the Uttaranchal Regularisation of Ad hoc Appointments (Posts under the purview of Public Service Commission) Rules, 2002 (applicable in other appeals in the present case to the respective State of Uttarakhand). They claimed the benefit of their services from 1988 to 2004 for the purpose of seniority. This Court set aside the judgment and order of the High Court on interpretation of Rule 7 and observed that they were appointed after the selection under the Regularisation Rules in the year 2004 and hence they can get seniority only from the year 2004 and not from 1988. Unfortunately, when this Court decided Narendrakumar Tripathi (supra), the aforesaid two binding decisions interpreting the very 1979 Rules and 2002 Rules taking the contrary view were not brought to the notice of this Court. Therefore, to that extent, the decision of this Court in the case of Narendrakumar Tripathi (supra) can be said to be *per incuriam*.

Even from the judgment in the case of Narendra Kumar Tripathi (*supra*), it appears that the entire Rule 7 has not been considered. Rule 7 of the 1979 Rules under which the contesting respondents – ad hoc appointees came to be regularised specifically mentions that “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. However, this Court took into consideration the rule 7 only up to the wording “date of order of appointment”. Therefore, if entire Rule 7 is read, it can be seen that it specifically provides that “a person appointed under these rules (1979 Rules) shall be entitled to seniority only from the date of order of appointment after selection in accordance with these rules (1979 Rules).

5.1 Learned counsel appearing on behalf of the ad hoc appointees has then heavily relied upon the decision of this Court in the case of Dr. Chandra Prakash (*supra*), reported in (2002) 10 SCC 710. He has also placed reliance upon the Constitution Bench decision of this Court in the case of Chandra Prakash and others v. State of U.P., reported in (2002) 4 SCC 234. However, it is required to be noted that the Constitution Bench in its decision reported in (2002) 4 SCC 234, as such, did not opine anything on merits. Earlier, a three Judge Bench of this Court referred the matter to the five Judge Bench, having found the conflict between the two Judge Bench decision of this Court in the case of State of U.P. v. Dr. R.K. Tandon, reported in (1995) 3 SCC 616, as modified by another two Judge Bench of this Court in the case of State of U.P. v. Dr. R.K. Tandon, reported in (1996) 10 SCC 247, with another decision of three Judges Bench. Thereafter, the Constitution Bench held that the two Judge Bench judgment in the case of Dr. R.K. Tandon (*supra*) does not lay down the correct law, being in conflict with the larger Bench judgment. That thereafter, the Constitution Bench observed and held that therefore the writ petitions from which the reference has arisen will have to be decided de hors the law laid down by those two judgments of the Bench of two judges. That thereafter the matters were again referred to the three Judge Bench and ultimately came to be decided by the judgment reported in (2002) 10 SCC 710 upon which the reliance has been placed by Shri Manoj Swarup, learned Senior Advocate appearing on behalf of the ad hoc appointees.

5.2 Having gone through the entire judgment in the case of Dr. Chandra Prakash (*supra*) and the relevant rules which fell for consideration before this Court and considering the facts in the said decision, we are of the opinion that the decision of this Court in the case of Dr. Chandra Prakash (*supra*), reported in (2002) 10 SCC 710 shall not be applicable to the facts of the case on hand and the same shall not be of any assistance to the ad hoc appointees in the present case. In the case before this Court, it was found that the doctors possessing requisite qualifications under the rules were temporarily appointed in U.P. PMS by Governor against substantive vacancies. They continued in such vacancies for long periods (from 1965-76 to 1983) enjoying all the benefits of regular service and meanwhile also selected by PSC. Therefore, it was found that in such circumstances as their initial appointments were not de hors the rules and therefore it was held that such doctors were not within the purview of 1979 Rules. Even the Seniority Rules applicable in that case (Rule 18 of the 1945 Rules) were different than the Seniority Rules, 1991, applicable in the present case. Rule 18 of the 1945 Rules, which was applicable in the case of Dr. Chandra Prakash (*supra*) reads as under:

“Seniority - Seniority in the service shall be determined by the date of the order of appointment in a substantive vacancy provided that if two or more candidates are

appointed on the same date their seniority shall be determined according to the order in which their names are mentioned in the order of appointment.” As per Rule 18 of the 1945 Rules, seniority in the service shall be determined by the date of the order of appointment in a substantive vacancy. However, as per Seniority Rules 1991, applicable in the present case, seniority is to be counted from the date of “substantive appointment” and “substantive appointment” means, an appointment, not being an ad hoc appointment, on a post in the cadre of service, made after selection in accordance with the service rules relating to that service. There is a difference and distinction between the “substantive vacancy” and the “substantive appointment”. Therefore, the decision of this Court in the case of Dr. Chandra Prakash (supra) shall not be applicable to the facts of the case on hand.

6. Having observed and held that the decision of this Court in the case of Narendra Kumar Tripathi (supra) is per incuriam, as the binding decisions of this Court in the cases of Santosh Kumar (supra) and Archana Shukla (supra) were not brought to the notice of this Court when this Court decided Narendra Kumar Tripathi (supra) and having held that on facts the decision of this Court in the case of Dr. Chandra Prakash (supra) shall not be applicable to the facts of the case on hand, we shall now consider the issue on merits independently.

7. The respective ad hoc appointees were initially appointed in the year 1985 vide office memo dated 12.06.1985. They were appointed on the basis of the recommendations of the Selection Committee constituted for ad hoc appointment vide G.O. No. 1033/84/38-1- 3532/84 dated 29.01.1985. They were appointed on ad hoc basis on the temporary post of Assistant Engineer in Rural Engineering Service Department. In the said office memo, it was specifically mentioned that the candidates will have no right to claim seniority in future on the basis of the said order of appointment (as ad hoc appointee). The relevant paragraph 2 of office memo dated 12.06.1985 reads as under:

“2. Their aforesaid appointments are being made on purely ad hoc basis with the conditions that their services are liable to be terminated on one month’s notice or salary in lieu of notice or on availability of candidates duly selected through the Public Service Commission to the above post and they will not have any claim for regular appointment in future in the department on the basis of his ad hoc appointment. When the names of the selected general category candidate and above reserved category candidates are made available by the Selection Committee after arranging the names of the general category candidates in the list and after giving them appointment, the inter-se seniority will be determined. The candidates will have no right to claim seniority in future on the basis of the date of this order of appointment.” It appears that thereafter within a period of four years from their appointment as ad hoc, their services came to be regularised under the 1979 Rules, extended from time to time and they were appointed and their services were regularised vide notification dated 23.02.1989. At this stage, it is required to be noted that their services were regularised vide notification dated 23.02.1989 as per the 1979 Rules, as extended in 1989. Therefore, the contesting respondents herein – ad hoc appointees, having taken the benefit of the 1979 Rules were bound by the conditions

mentioned in the 1979 Rules. At this stage, it is also required to be noted that even it is not the case on behalf of the contesting ad hoc appointees that they are not governed by the 1979 Rules. Rules 1979 provide for regularisation of ad hoc appointees. Rules 4 to 7, which are relevant for our purpose, read as under:

“4. Regularization of ad hoc appointments: (1) any persons who-

(i) was directly appointed on ad-hoc basis before January 1, 1977 and is continuing in service as such on the date of commencement of these rules;

(ii) possessed requisite qualifications prescribed for regular appointment at the time of such ad-hoc appointment; and

(iii) has completed or, as the case may be, after he has completed three years continuous service shall be considered for regular appointment in permanent or temporary vacancy as may be available on the basis of his record and suitability before any regular appointment is made in such vacancy in accordance with the relevant service rules or order. (2) In making regular appointments under these rules, reservations for the candidates belonging to the Scheduled Castes, Scheduled Tribes, Backward classes and other categories shall be made in accordance with the order of the Government in force at the time of recruitment. (3) For the purpose of sub-rule' (1) the appointing authority shall constitute a Selection Committee and consultation with the Commission shall not be necessary.

(4) The appointing authority shall prepare an eligibility list of the candidates, arranged in order of seniority, as determined from the date of order of appointment and if two or more persons are appointed together from the order in which their names are arranged in the said appointment order, the list shall be placed before the Selection Committee along with their character rolls and such other records, pertaining to them as may be considered necessary to judge their suitability. (5) The Selection Committee shall consider the cases of the candidates on the basis of their records referred to in sub-rule (4).

(6) The Selection Committee shall prepare a list of the selected candidates, the names in the list being arranged in order of seniority and forward it to the appointing authority.

5. Appointments:- The appointing authority shall, subject to the provisions of sub-rule (2) of rule 4, make appointments from the list prepared under sub-rule (6) of the said rule in the order in which their names stand in the list.

6. Appointments be deemed to be under the relevant service rules etc.:- Appointments made under these rules shall be deemed to be under the relevant service rules, or orders, if any.

7. Seniority”- (1) 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 to the appointment of such persons 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.” Thus, as per the 1979 Rules, any person who was directly appointed on ad hoc basis and continued in service and possessed requisite qualifications prescribed for regular appointment at the time of such ad hoc appointment and has completed three years continuous service shall be considered for regular appointment in permanent or temporary vacancy as may be available on the basis of his record and suitability before any regular appointment is made in such vacancy in accordance with the relevant service rules or order. It further provides that for the purpose of regularisation, the appointing authority shall constitute a Selection Committee and thereafter the appointing authority shall prepare an eligibility list of candidates, arranged in order of seniority, That thereafter the Selection Committee shall prepare the list of selected candidates and the names in the list being arranged in the order of seniority and forward to the appointing authority and only thereafter the appointing authority shall make an appointment from the list prepared under sub-rule (6) in the order in which their names stand in the list. As per rule 6, such appointments were deemed to be under the relevant service rules etc. Thus, the appointments on regularisation of their services are made only after their names are recommended by the Selection Committee constituted under sub-rule 3 of Rule 4 of the 1979 Rules. Therefore, “substantive appointments” can be said to be only when they are appointed and their names are forwarded by the Selection Committee and their services are regularised as per the 1979 Rules. Rule 7 of the 1979 Rules, as such, clinches the issue. It specifically provides that a person appointed under the 1979 Rules shall be entitled to seniority only from the date of order of appointment after selection in accordance with the 1979 Rules. It also further provides that in all cases they shall be placed below the persons appointed in accordance with the relevant service rules, or as the case may be, the regular prescribed procedure, prior to the appointment of such person under the 1979 Rules. Therefore, as per the 1979 Rules, the persons whose services have been regularised and they are appointed after the recommendations by the Selection Committee as per the 1979 Rules, their seniority shall be only from the date of order of appointment after selection in accordance with the 1979 Rules, i.e., in the present case, from 23.02.1989.

7.1 It is also required to be noted that neither in the year 1985 when they were appointed on ad hoc basis on temporary posts nor at the time when their services were regularised in the year 1989, the service rules for Group ‘B’ were in force. In the year 1993, Uttar Pradesh Rural Engineering (Group ‘B’) Service Rules, 1993 came to be enacted. Rules 3(g), 3(i) and rule 21, which are relevant for our purpose, read as under:

“3 (g) “member of the Service” means a person substantively appointed under these rules or the rules or order in force prior to commencement of these rules to a post in the cadre of the Service;

3 (i) “substantive appointment” means an appointment, not being an ad hoc appointment, on a post in the cadre of the service made after selection in accordance with the rules and, if there were no rules, in accordance with the procedure prescribed for the time being, by executive instructions issued by the Government;

21. Seniority – The seniority of persons substantively appointed to a post in the service shall be determined in accordance with the Uttar Pradesh Government Servants’ Seniority Rules, 1991, as amended from time to time.” As per Rule 21 of the 1993 Rules, the seniority of persons substantively appointed to a post in the service shall be determined in accordance with the Uttar Pradesh Government Servants’ Seniority Rules, 1991, as amended from time to time. Even as per the Service Rules, 1993, “substantive appointment” means an appointment, not being an ad hoc appointment, on a post in the cadre of the service.....

As per Seniority Rules, 1991, which also defines the “substantive appointment” as per rule 4(h), the seniority shall be counted only from the date of their “substantive appointment”. In the present case, Seniority Rules clearly provide that seniority in any category or cadre post shall be determined from the date of order of “substantive appointment”. As observed and held by this Court in the case of Santosh Kumar (supra), ad hoc appointments cannot be deemed to be substantive appointments. Even the definition of “substantive appointment” under the Service Rules, 1993 and the Seniority Rules, 1991, referred to hereinabove, is very clear and the service rendered as ad hoc cannot be treated as “substantive appointment”.

8. The sum and substance of the above discussion would be that on a fair reading of the 1979 Rules, extended from time to time; initial appointment orders in the year 1985 and the subsequent order of regularisation in the year 1989 of the ad hoc appointees and on a fair reading of the relevant Service Rules, namely Service Rules, 1993 and the Seniority Rules, 1991, our conclusion would be that the services rendered by the ad hoc appointees prior to their regularisation as per the 1979 Rules shall not be counted for the purpose of seniority, vis-à-vis, the direct recruits who were appointed prior to 1989 and they are not entitled to seniority from the date of their initial appointment in the year 1985. The resultant effect would be that the subsequent re- determination of the seniority in the year 2016 cannot be sustained which was considering the services rendered by ad hoc appointees prior to 1989, i.e., from the date of their initial appointment in 1985. This cannot be sustained and the same deserves to be quashed and set aside and the seniority list of 2001 counting the services rendered by ad hoc appointees from the date of their regularisation in the year 1989 is to be restored.

9. Now so far as the reliance placed upon the decision of this Court in the case of Direct Recruit Class II Engg. Officers’ Assn. (supra), relied upon by the learned Senior Advocate appearing on behalf of the ad hoc appointees is concerned, it is required to be noted that even in the said decision also, it is observed and held that where initial appointment was made only ad hoc as a stop gap arrangement and not according to the rules, the officiation in such post cannot be taken into account for considering the seniority. In the case before this Court, the appointments were made to a post according to rule but as ad hoc and subsequently they were confirmed and to that this Court observed and held that where appointments made in accordance with the rules, seniority is to be

counted from the date of such appointment and not from the date of confirmation. In the present case, it is not the case of confirmation of the service of ad hoc appointees in the year 1989. In the year 1989, their services are regularised after following due procedure as required under the 1979 Rules and after their names were recommended by the Selection Committee constituted under the 1979 Rules. As observed hereinabove, the appointments in the year 1989 after their names were recommended by the Selection Committee constituted as per the 1979 Rules can be said to be the “substantive appointments”. Therefore, even on facts also, the decision in the case of Direct Recruit Class II Engg. Officers’ Assn.(supra) shall not be applicable to the facts of the case on hand. At the cost of repetition, it is observed that the decision of this Court in the case of Direct Recruit Class II Engg. Officers’ Assn. (supra) was considered by this Court in the case of Santosh Kumar (supra) when this Court interpreted the very 1979 Rules.

10. Similarly, the decision of this Court in the case of Rudra Kumar Sain (supra), relied upon by the learned counsel appearing on behalf of the ad hoc appointees also shall not be applicable to the facts of the case on hand. In the case before this Court, the promotees appointed on ad hoc were continued for fairly long periods and their appointments were made after due consultation with, or approval of Service Commission, and therefore their appointments were held not to be ad hoc or fortuitous or stopgap. It is to be noted that in the present case when the ad hoc appointees were appointed in the year 1985, there was no consultation with the UPSC and as such there was no recommendation by the UPSC. Their services came to be regularised as per the 1979 Rules and after they were selected by the Selection Committee constituted under the 1979 Rules, which specifically provides that for the purpose of regularisation of ad hoc appointments, the appointing authority shall constitute a Selection Committee and consultation with the Commission shall not be necessary. It is also to be noted that when the ad hoc appointees were appointed in the year 1985, they were appointed on the basis of the recommendations of the Selection Committee constituted for ad hoc appointments and when subsequently their services were regularised and they were appointed in the year 1989, they were appointed by the order of Governor. This is one additional ground to hold that their substantive appointments can be said to be only from the date of their regularisation/appointment made in the year 1989 after their names were recommended by the Selection Committee constituted under the 1979 Rules and their services were regularised as per the 1979 Rules after following the procedure as required under the 1979 Rules, i.e., in the year 1989. Therefore, their seniority is to be counted only from 23.02.1989, the date of their regularisation and the services rendered by the ad hoc appointees prior thereto, i.e., from the date of their initial appointments in the year 1985 is not to be counted for the purpose of seniority, vis-à-vis, the direct recruits appointed prior to 1989.

11. In view of the above and for the reasons stated above, all the appeals succeed. The impugned judgments and orders dated 19.09.2016 passed in Writ-A No. 18925/2016 and 13.03.2018 passed in SERB No. 13832/2017 passed by the High Court of Judicature at Allahabad and judgments and orders dated 03.07.2018 in Writ Petition (S/B) No. 204/2007 and 30.08.2018 in Writ Petition (S/B) No. 203/2007 passed by the High Court of Uttarakhand are hereby quashed and set aside. The re-determination of the seniority and the revised seniority list dated 22.03.2016 counting the services of the ad hoc appointees prior to 23.02.1989 and counting the services as ad hoc from 12.06.1985 for the purpose of seniority is hereby quashed and set aside and the final seniority list

dated 14.12.2001 fixing the seniority considering the services rendered by ad hoc appointees from 23.02.1989 is hereby restored. Necessary consequence shall follow. No costs.

.....J.

[Dr. Dhananjaya Y. Chandrachud]

New Delhi;
July 28, 2021.

.....J.

[M.R. Shah]