B. L. Goel vs State Of U.P. & Ors on 17 October, 1978

Equivalent citations: 1979 AIR 228, 1979 SCR (2) 82, AIR 1979 SUPREME COURT 228, 1978 LAB. I. C. 1773, 1978 UJ (SC) 831, 1979 SCC (L&S) 207, 1979 (2) SCC 378, (1979) 1 LAB LN 23, (1979) SERVLJ 257

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Bench: Ranjit Singh Sarkaria, Y.V. Chandrachud, N.L. Untwalia, O. Chinnappa Reddy, A.P. Sen

PETITIONER:
B. L. GOEL

Vs.

RESPONDENT:
STATE OF U.P. & ORS.

DATE OF JUDGMENT17/10/1978

BENCH:
SARKARIA, RANJIT SINGH
BENCH:
SARKARIA, RANJIT SINGH
CHANDRACHUD, Y.V. ((CJ)
UNTWALIA, N.L.
REDDY, O. CHINNAPPA (J)
SEN, A.P. (J)

CITATION:
1979 AIR 228 1979 SCR (2) 82
1979 SCC (2) 378

ACT:
U.P. Higher Judicial Service Rules, 1953-Rules 20 and 23-Appellant a promotee to post of District Judge-Government created posts of District Judges. for absorption of promotees-Three direct recruits confirmed as District Judges against these vacancies-Appellant not confirmed-Notifications declaring confirmations-Validity of.

HEADNOTE:
Under the U.P. Higher Judicial Service Rules, 1953 appointments to the posts of Civil and Sessions Judges were made by promotion from the members of the U.P. Civil Service

(Judicial Branch) and by direct rccruitment. Rule 20 of the Rules dealing with seniority provided that seniority in each of the two classes of posts shall be determined by the date of confirmation in that class of post. Rule 23 provided that a probationer shall be confirmed in his appointment at the end of his period of probation if the Governor was satisfied that he was fit for confirmation.

The appellant who was appointed as a Civil Judge in 1955, was promoted as officiating Civil and Sessions Judge in July, 1960. Respondents 3 to 5 who were direct recruits to the post of Civil and Sessions Judges joined service In May/June, 1966.

For the purpose of absorbing the promoted officers the Government converted 22 temporary posts into permanent posts of Civil and Sessions Judges with effect from April 1, 1966. Three out of those posts were given to the three respondents, who were direct recruits, and they were confirmed in the posts with effect from May/June, 1968. In twelve other posts, twelve promotees were confirmed with effect from April 1, 1966, but the appellant was not so confirmed though he had been continuously officiating as a Civil and Sessions Judge since July, 1960. He was confirmed as Civil and Sessions Judge with effect from January 1, 1969. He was eventually confirmed in the post of District and Sessions Judge with effect from February 1, 1973.

The three respondents were later appointed as District and Sessions Judges. By a Notification dated March 19, 1975, they were confirmed in those posts with effect from July/August, 1972. The Notification dated July 22, 1977 issued by the High Court, showed the three respondents at serial Nos. 31 and 32 of the list and the appellant at No.38 and the dates of confirmation were shown as August 25, 1972 in respect of three respondents and March 18, 1973 in respect of the appellant.

The High Court allowed the appellant's writ petition and quashed the Notifications dated March 19, 1975 and July 22, 1971 insofar as they related to the dates of confirmation of the appellant and the respondents. The High Court on the administrative side was directed to redetermine the dates of their confirmation as District and Sessions Judges and their inter-se seniority in accordance with Rule 20.

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In appeal it was, inter alia, contended on behalf of the appellant that the 22 permanent posts having been created with effect from 1-4-1966 for permanent absorption of promotees who had been officiating prior to that date four a period of more than three years, (Respondents 3 to S who were not even in service on that date, could not be absorbed against any of those vacancies, and the appellant who had put in nearly six years of service in the Cadre on the date when the three respondents were appointed, could not be denied confirmation with effect from April 1, 1966;

that apart from greater length of service, the appellant has an excellant, unblemished record of service; and in the circumstances, the confirmation of the appellant with effect from date later than those assigned to Respondents 3, 4 and S is unfair, arbitrary and discriminatory.

Allowing the appeal,

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HELD: The main criteria to be considered for confirmation of officers officiating in the Higher Judicial Service of the State are:

(i) Availability of a substantive vacancy/post.

(ii) Suitability for the post. [92C]

Here, a substantive post of Civil and Sessions Judge was available to the appellant from April 1, 1966, when Respondents 3, 4 and 5 had not even been appointed to the service in any capacity. By April 1, 1966, the appellant had put in service as officiating Civil and Sessions Judge for a period exceeding 5 years and 9 months. There is nothing on record to suggest that by or on April 1, 1966, he was not suitable for confirmation as Civil and Sessions Judge, or later, as District and Sessions Judge when a post in that grade became available to him. In the circumstances, the impugned Notification dated March 19, 1975 issued by the Government, inasmuch as it did not accord to the appellant the same treatment which had been meted out to twelve other promoted officers who were confirmed with effect from April 1, 1966, is not based on any intelligible. differentia or reasonable principle, and as such, cannot be sustained. The same comments apply mutatis mutandis to the impugned Notification, dated July 22, 1977, issued by the High Court. Once it is found that the Notification dated March 19, 1975 cannot be sustained, The foundation for fixing the dates of confirmation and determining relative seniority of District and Sessions Judges will also crumble. [92D-G]

The entire matter therefore, requires reconsideration by the High Court in the exercise of its powers under Article 235 of the Constitution. [93A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 911 of 1978.

Appeal by Special Leave from the Judgment and order dated 12-12-1977 of the Allahabad High Court (Lucknow Bench) in Writ Petition No. 1283 of 1976 R.K.Garg, V. J. Francis, Madan Mohan and D.K Garg for the Appellant.

G. N. Dikshit and O.P. Rana for Respondents Nos. 1 and

2. S. N Andley, B. P. Maheshwari and Sures Sethi for Respondents 3 and 5.

Yogeshwar Prasad, Mrs. Rani Chhabra and Miss Meera Bali, for Respondent No. 4.

P. C. Bhartari and R. P. Kathuria for the Intervener (B. S. Yadav and Ors.) The Judgment of the Court was delivered by SARKARIA,J.- This appeal by special leave is directed against a judgment dated December 12, 1977 of the High Court of Allahabad.

The appellant herein, Shri B. L. Goel, is a District and Sessions Judge and as such a Member of U.P. Higher Judicial Service. The sanctioned permanent strength of the Higher Judicial Service was 82. It comprised (i) 37 posts of District and Sessions Judges and (ii) 45 Civil and Sessions Judges, including five posts of leave reserve. The service includes substantive posts as well as temporary posts. The appointments to the posts of Civil and Sessions Judges are made from two sources:

(a) By promotion from the members of the U.P. Civil Service (Judicial Branch); and

(b) By direct recruitment after consultation with the Court (vide Rule 5).

Under Rules 13 and 17 of the U.P. Higher. Judicial Service 1953 (hereinafter referred to as the 1953 Rules) waiting lists were to be prepared of the persons found fit for promotion or appointment to the higher service. Rule 19 provided that the Governor shall, on receipt from the Court of the waiting lists prepared under Rules 13 and 17, make appointment to the service on the occurrence of substantive vacancies. Para 2 of Rule 19 provide d that the Governor could make appointments in temporary or officiating vacancies of the persons who were eligible for appointment by promotion and whose names were borne on the waiting list on force prepared under Rule 13. Rule 21 fixed the period of probation for direct recruits at two years. Rule 22 provided that the probation could be extended for a specific period. On satisfactory completion of his period of probation, a direct recruit was entitled to be confirmed. No period of probation was fixed in the case of promotees. Rule 20, which is being impugned, originally, ran as follows:

> "20. Seniority.-Subject to the provisions of rule 31, seniority in each of the two classes of posts in the Services shall be determined by the date of confirmation in that class of post;
>
> Provided that if in any class of the post, two or more persons are confirmed on the same date, their seniority will be determined according to the order in which their confirmation has been notified; Provided further that in the case of direct recruits, their inter se seniority will be fixed in the same order in which their names appear in the list prepared by the Selection Committee under rule 17."

Rule 23 dealt with confirmation. It provided:

> "23. Confirmation.-(1) A probationer shall be confirm ed in his appointment at the end of his period of probation or at the end of the extended period of probation, if the Governor, after consultation with the Court, is satisfied that he is fit for confirmation. (2) All confirmations under this rule shall be notified in the the official Gazette." D

The appellant was appointed to the U.P. Civil Service (Judicial Branch) on September 13, 1948 on the basis of a competitive examination held by the U.P. Public Service Commission. He was posted as Civil Judge in the same service in January 1955. He was appointed by promotion as an officiating Civil and Sessions Judge in U.P. Higher Judicial Service in July 1 960. Respondents 3, 4 and 5 are direct recruits. They were appointed on probation on Civil and Sessions Judges and joined the service on May 31, 1966, May 27, 1966 and June 1, 1966, respectively.

The constitutional validity of the 1953 Rules providing for appointment to U.P. Higher Judicial Service first came up for consideration before this Court in 1966, in Chandra Mohan v state of U.P.(1) wherein it was held that the 1953 Rules providing for recruitment of District Judges particularly rules 5, 8, 13, 17 and 19 of the U.P. Higher Judicial Service Rules 1953, were invalid as they contravened the mandate of Article 233(1), and that consequently, the appointments of persons appointed under those Rules including the appellant and respondents 3, 4 and S to the U.P Higher Judicial Service were unconstitutional and invalid. The appointments of persons appointed under the 1953 Rules, including the appellant and respondents 3, 4 and S were, however. validated by the Constitution (Twentieth Amendment) Act, 1964, which inserted Article 233A in the Constitution.

(l) A.T.R. 1966 S.C. 1987.

By a notification dated March 31, 1969 the Governor confirmed respondents 3, 4 and 5 as Civil and Sessions Judges with effect from May 31, 1966. May 27, 1966 and June 1, 1966, respectively. Again by a Notification dated May 31, 1969 they were confirmed with effect form the same dates. These Notifications were superseded by Notification dated July 19, 1974. The dates of confirmation of the respondents, however, remained unchanged. This notification was cancelled by Government notification dated August 26, 1974.

The Government by its order (G.O. No. 870/7-AI-503) dated June 19, 1971, created by conversion of the existing temporary posts,22 permanent posts of Civil & Sessions Judges with effect from June 1,1969, for absorbing the promoted officers, who had been continuously officiating as Civil & Sessions Judges for more than three years.

Subsequently, by its G.O. 2693/VII-A-Niaya/503/70. the Government in partial modification of its G.O., dated June 19, 1971, directed that the creation of 22 permanent posts of Civil & Sessions Judges shall have effect from April 1, 1966. This Notification shows that all these posts/courts continuously existed on temporary basis from different dates ranging between July 22, 1949 to August 8.1962.

Consequent upon the creation of 22 permanent posts with effect from April 1. 1966, the Governor on March 19,]975 issued a Notification in supersession of the earlier ones.

Although all the 22 permanent posts created with effect from April 1,1966 according to the Government Notification were meant for absorption of promotees only three of those posts were given to the three direct recruits, respondents 3, 4 and S (S/Shri R. C. Bajpai, Rikheshwari Prasad

and Behari Ji Das) who were shown as confirmed with effect from May 31, 1968, May 27, 1968 and June 1, 1968, respectively, the dates on which they completed their two years' probation. Against 12 of those posts, 12 promotees were confirmed as District and Sessions Judges with effect from April 1, 1966. The appellant was not one of those 12 promotees who were so confirmed although he had been continuously officiating as Civil and Sessions Judge since July 1960 and the direct recruits/Respondents 3, 4 and 5 were appointed to that cadre about six years later. The appellant was however shown, along with others as confirmed with effect from January 1, 1969.

The appellant was appointed as officiating District and Sessions Judge under Government Notification dated January 9, 1974 with the rider that the seniority would be determined later on. This Notification was cancelled by Notification dated July 17, 1974 whereby the appellant was confirmed on the post of District and Sessions Judge with effect from February 1, 1973.

Respondent 3, 4 and 5 were appointed as District and Sessions Judges, and confirmed as such by a Government Notification dated January 9, 1974. These Notifications were cancelled and replaced by fresh Notifications from time to time. The last Notification Issued by the State Government confirming the appellant and respondents 3, 4 and 5 as District and Sessions Judges is of March 19, 1975. Under this Notification, the appellant was confirmed with effect from February 1,1973 while respondents 3, 4 and 5 were confirmed with effect from July 16, 1972, August 8, 1972 and August 25, 1975, respectively.

On July 22, 1977, the High Court in exercise of its powers under Article 235 of the Constitution, issued a Notification confirming certain officers as District and Sessions Judges in order of seniority from the dates and in the vacancies shown against their names. the appellant was shown at Serial No. 38 and respondents 3, 4 and 5 at Serial] Nos. 30, 31 and 32, respectively. While the appellant's date of confirmation was mentioned as May 18, 1973, respondents 3, 4 and 5 were shown as confirmed with effect from August

25. 1972.

The appellant challenged the validity of all the Notifications issued by the State Government relating to his confirmation as also of respondents 3, 4 and 5 on the post of Civil and Sessions Judge as well as on the post of District and Sessions Judge by a writ petition under Article 226 on these grounds: (1) That these orders were discriminatory and therefore, violative of Articles 14 and 16 of the Constitution; and (2) that the Governor had no power to confirm Civil and Session Judges and District Judges, as the same power being a part of 'control' vested exclusively in the High Court under Article 235, (3) The appellant, also, (by amending his writ petition) impugned the validity of Notification No. 670 dated July 22, 1977 issued by the High Court during the pendency of the writ petition, (4) It was also contended on the authority of this Court in S. B. Patwardhan v. State of Maharashtra(1) that the rule requiring determination of the seniority to be governed by the date of confirmation is Unconstitutional as it made seniority dependent upon the fortuitous circumstances of confirmation, and where a cadre consists of both permanent and temporary employees, the date of confirmation cannot be an intelligible criterion for determining seniority as between direct recruits and promotees.

The High Court has however, taken the view that Patwardhan's (supra) is not attracted to the facts of the instant case because in the case of U.P. Higher Judicial Service, the matter stands concluded (1) A.I.R. 1977 S.C. 2051, by the decision of this Court in Chandra Mohan's case(l), wherein it was held that it is open to the competent authority to determine the seniority in accordance with rule 20 sans the second proviso, supplemented by any other valid principles or rules. After an elaborate discussion, the High Court concluded: "The Notification dated 17th July 1974 and Notification dated 19th March, 1975 issued by the Governor confirming the petitioner and the opposite parties 3, 4 and 5, are invalid and ultra-vires inasmuch as the power to confirm on the post of District Judge vests in the High Court and not in the Governor. The Notification of the High Court, dated 22nd July 1977, however, meets the situation and fills up the lacuna to a certain extent. This Notification has been issued by the High Court in exercise of its powers under Article 235 of the Constitution....The said Notification of the High Court also mentions the respective dates from which they stood confirmed. These dates are not founded on proper criteria and it appears that they were not properly fixed. Hence, that part of the said Notification of the High Court cannot be sustained. Their dates of confirmation shall have to be redetermined by the High Court."

In the result, the High Court partly allowed the writ petition and quashed the aforesaid Notifications dated July 17, 1974 and July 22, 1977 so far as they relate to the dates of confirmation of the petitioner and the opposite parties 3, 4 and 5. A direction was given to the High Court in its administrative side, to redetermine the dates of their confirmation as District & Sessions Judges and their inter-se seniority "in accordance with rule 20 sans the second proviso of the U.P. Higher Judicial Service Rules, 1953, supplemented by any other valid principles or rules".

The main contentions raised by Shri R. K. Garg, appearing on be half of the appellant, are (1) Rules 20 and 23 of the 1953 Rules, which make determination of seniority wholly dependent upon the fortuitous circumstance of confirmation offend Articles 14 and 15 of the Constitution. (It is submitted that earlier in Civil Appeal 1703 of 1969 decided on April 19, 1976, he was obliged to give up the plea because fundamental rights were then under suspension and the broader protection of Article 14 was not available to him). Reliance has been placed on Patwardhan's case (ibid).

(2) (a) In the impugned Notifications, dates of confirmations have been fixed arbitrarily in a manner which unduly favours the direct recruits (respondents 3, 4 and 5) and singles out the appellant pro (I) A.I.R. 1976 S.C. 1482.

motee for unfavourable treatment, notwithstanding the fact that he was Promoted as Civil and Sessions Judge about 6 years prior to the recruitment of Respondents 3, 4 and 5 to the same cadre, and had also been promoted to the senior grade of the Service as District and Sessions Judge, one year prior to the promotion of these respondents to that grade.

The High Court has not properly construed the observation in this Court's decision dated April 19, 1976 in C.A. 1703 of 1969, to the effect, that the seniority was to be determined "in accordance with rule 20 sans the second proviso of the U.P. Higher Judicial Service Rules, 1953, supplemented by any other valid principles or rules,". In that observation the indication was clear that the confirmations were not to be arbitrarily made but in accordance with valid and fair criteria which

would ensure that its consequences did not offend Articles 14 and 16. One of these criteria would be the length of continuous service in the cadre of the Higher Judicial Service. Indeed, new Rules of 1975 adopt this as the governing criteria for fixation of inter se seniority in the service. According to Mr. Garg, this criterion, based as it was on a principle of fairplay, could be validly imported into the truncated Rule 20 of 1953 Rules, in accordance with the broad observation of this Court in its decision in C.A. 1703 of 1969.

(b) In any case, the Government had while creating 22 permanent posts with effect from April, 1966, (by conversion of the existing temporary posts held by promotees into permanent ones) as per Notifications (G.O. No. 870/7-AI-503 and G.C). No. 2093/VII-A-Niaya/ 503/70) declared it as a matter of policy that all these posts are being created for permanent absorption of promotes who have been continuously working against temporary posts in an officiating capacity for more than three years. Respondents 3, 4 and S had not even been appointed (on probation) to the service on April 1, 1966. They entered the service on May 31, 1966, May 21, 1966 and June 1, 1966; while on April 1. 1966, or even on the date of respondents' entry into service, the appellant had put in about six years' continuous service as officiating Civil and Sessions Judge. Thus, both as a matter of declared policy and fair principle, the appellant could not be denied confirmation with effect from April 1, 1966, against one of those 22 posts, and none of the respondents could be confirmed against any of those 22 posts which had been made permanent for the purpose of absorbing promotes who had put in officiating service for a period of more than three years. Stress has been laid on the fact that apart ll from greater length of service, the appellant has an excellent, unblemished record of service. In the circumstances, therefore, the confir-

7-817 SCI/78 mation of the appellant with effect from a date later than those assigned to Respondents 3, 4 and 5 is unfair, arbitrary, and discriminatory.

As against this, Shri Andley, Learned Counsel for Respondents 3, 4 and 5 submits that the Respondents should be deemed to have been appointed to the service in 1964, when they were selected for appointment to the service.- by the Select Committee of the High Court and were recommended for appointment to the Government. The Respondents, it is submitted, would have been appointed to the Service and joined it in 1964, but for the fact that Chander Mohan etc. in the writ proceeding obtained an interim order from the Court, restraining the Government from giving effect to their appointments, and it was only on the vacation of that "stay" order in 1966, the respondents could join duty, which they did in May and June 1966. The delay in joining the service being not due to any fault on the part of the Respondents, for the purpose of confirmation and determination of seniority, it would be but fair to take the date of their appointment as the date on which they were selected by the Selection Committee in 1964 for recruitment to the Service. If no stay order issued by the Court had intervened, the Respondents would have been entitled to be confirmed on completion of their two years' probation in 1966, Long before a substantive vacancy could become available to the appellant. It is pointed out while these direct recruits were, as usual, appointed against substantive vacancies, on probation, the appellant and other promotes like him were appointed against temporary posts on officiating basis only, and they (promotees) could claim confirmation only when substantive vacancies/posts became available to them. It is further argued that the intendment of Rule 8 of the 1953 Rules was that 25 per cent of the vacancies in U.P. Higher

Judicial Service should be filled by direct recruitment, and this, according to the learned Counsel implies that confirmation of direct recruits and promotes at any given time should also be made in the ratio of 1: 3 by rotation. It is urged that when the matter is considered from this angle, the en bloc confirmation of 12 promotes with effect from April l, 1966 followed by the confirmation of the three direct recruits (respondents 3, 4 and 5) with effect from May 30, 1968, May 27, 1968 and June 1968, was neither improper, nor arbitrary. Learned Counsel further maintains that equities are wholly on the side of respondents 3, 4 and S who are not younger than the appellant, and this should also be taken into account as a factor in their favour.

The last but luke-warm contention of Shri Andley is that it is not clearly borne out by the record that the 22 temporary posts, converted into permanent ones with effect from April 1, 1966, were created for the purpose of absorbing the promotees only.

We do not think it necessary to decide the question with regard to the constitutional validity of Rules 20 and 23, because this appeal can be disposed of on the second ground urged by Shri Garg. Before dealing with that contention, it is necessary to have a clear picture of its factual premises. There is no dispute that the appellant was promoted as officiating Civil and Sessions Judge in July 1960, while Respondents 3, 4 and 5 joined the service as Civil and Sessions Judges on probation, about six years later in May/June, 1966. We are unable to accept Shri Andley's argument that the date of the Respondents' C entry into service should be assumed as the date in 1964, when the Selection Committee selected them for appointment. There is no warrant for importing such a fiction. The stark fact remains that respondents 3, 4 and S joined the service in May/June 1966.

It is further an uncontroverted fact that the appellant was promoted to the senior grade as officiating District and Sessions Judge about one year prior to the respondents' promotion to that grade. It is further clear from the record (vide Paragraph 6 (g) of the affidavit of Shri Radhika Raman, Under Secretary to the Government of Uttar Pradesh:

> Annexure IV A to the Rejoinder Affidavit of Respondents 3 and 5 filed in the High Court as also the copies of the Notifications filed by the appellant in this Court) that the State Government created (by conversion of the existing temporary posts/courts) 22 permanent posts/ courts of Civil and Sessions Judges, under G.O. Nos. 870/7-1-503, dated 19- 6-1971 with effect from 1-1-69. Later on, by another Government order No. 2693/VII/A-Nyay 503/70, dated 3-3-1973, in modification of the earlier notification, the creation of the aforesaid 22 permanent posts was given effect from 1-4- 1966. By the impugned Government Notification of March 19, 1975, against 12 of those 22 posts, twelve promoted officers shown at Serial Nos. 24 to 35 were confirmed with effect from 1-4-1966. Against the next 3 of those 22 posts, respondents 3, 4 and 5 were confirmed with effect from 31-5- 68, 27-5-68 and 1-6-68. Against the remaining seven promoted officers including the appellant, were confirmed with effect from January 1, 1969. The first proviso to Rule 8 of 1953 Rules which provided for a quota of 25% for direct recruitment and 75% for promotion, was specifically declared void by this Court in Chandra Mohan's case decided in 1966. That void Rule, being non-existent, was not available for the purposes of

confirmation etc. After considering the entire material on record and hearing the Counsel for the parties, including Shri Dikshit appearing for the State, we are unable to appreciate, why the appellant like 12 other promoted officers, was not confirmed with effect from April 1, 1966, when he was continuously working as officiating Civil and Sessions Judge from July, 1960.

In the case of promoted officers, the main criteria to be considered for their confirmation are:

(i) Availability of a substantive vacancy/post.

(ii) Suitability for the post.

Here, in the case of the appellant, a substantive post was available to him with effect from April 1, 1966, when respondents 3, 4 and S had not even been appointed, on probation or otherwise, to the service. By that date, April 1, 1966, he had put in service as officiating Civil and Sessions Judge for a period of 5 years and 9 months approximately. There is nothing on record to suggest that by or on April 1, 1966, he was not found suitable for confirmation. Why was he, then, not accorded the same treatment in the matter of fixing the date of his confirmation as had been meted out to twelve promoted officers who were confirmed with effect from April 1, 1966 Shri Dikshit has not been able to satisfy us that in not allocating 1-4-66 to the appellant as the date of his confirmation, the Government were acting according to any intelligible differentia or reasonable principle. Nor is any a principle justifying a differential treatment to the appellant in the matter of fixing the date of his confirmation, discernible from the impugned Notification dated March 19, 1975, itself.

We are therefore, of opinion that this Government Notification dated March 19, 1975 cannot, as it stands, be sustained and needs reconsideration .

The same comments apply mutatis mutandis to the impugned Notification, dated July 22, 1977, issued by the High Court. Moreover, once it is found that the Notification dated March 19, 1975 cannot be sustained, the foundation for fixing dates of confirmation and determining relative seniority of District and Sessions Judges will also crumble.

Accordingly we allow this appeal, set aside the impugned Notifications dated March 19, 1975 and July 22, 1977 in so far as they fix the dates of confirmation of the appellant vis-a-vis Respondents 3, 4 and 5, both in the junior and senior grade of the U.P. Higher Judicial Service. The High Court shall consider the matter afresh and refix and readjust, in the exercise of its powers under Article 235 of the Constitution, the dates of the confirmation of the appellant and the said respondents, at first, in the grade of Civil and Sessions Judges, and then in the grade of District and Sessions Judges, in accordance with law. There will be no order as to costs in this Court.

P.B.R. Appeal allowed.