

SMT. IMLIKOKLA LONGCHAR & ORS.

A

v.

THE STATE OF NAGALAND & ORS.

(Civil Appeal No. 7166 of 2022)

OCTOBER 11, 2022

B

**[DINESH MAHESHWARI AND ANIRUDDHA BOSE, JJ.]**

*Service Law – Nagaland State Council on Educational Training Service Rules, 2003 - Promotion – Seniority - The dispute arose regarding the seniority of four Appellants and Respondent 'K' – Draft seniority list as on 1st July 2006 reflected K below the Appellants as the Appellants became senior lecturer by promotions in 2003 whereas K's regularisation was done in 2004 as per the Cabinet Memorandum of March, 2005 - K objected on ground that the date of entry of the Appellants into the cadre of senior lecturer was subsequent to her entry into the said cadre - K's representation was rejected by the Departmental Promotional Committee (DPC) and the final seniority list was published as per the Draft Seniority List on 17<sup>th</sup> November, 2006 – Against the same, K approached the High Court - The first set of Writ Petition filed by K, being W.P. (C) No. 173 (K) of 2007 which was dismissed on technical grounds – Another Writ Petition [W.P. (C) No.284(K) of 2007] was also instituted by K questioning regularisation of Appellants which was also dismissed – K, however, was partially successful in the second round of litigation initiated by writ petition registered as W.P (C) No. 126(K) of 2014 – The High Court remanded the matter back to DPC for reconsideration and set aside the DPC recommendations as the same did not reflected the consideration of Nagaland State Council on Educational Training Service Rules, 2003 – DPC retained their earlier decision of 2007 in the meeting that took place subsequent to the order of the High Court - In the appeals arising out of W.P. (C) No. 173(K) of 2007 and W.P.(C) No. 284 (K) of 2007, a Division Bench of the High Court in a common judgment delivered set aside the recommendation of DPC and ordered the State to take immediate steps for reconvening of the D.P.C. for purpose of fresh recommendation for regularization of the private respondents in the post of Sr. Lecturer on strict observance of the Rules of 2003 – Against the same, the Appellants have preferred*

C

D

E

F

G

H

- A *the present appeal on the ground that the DPC recommendations are in accordance with the Rules of 2003 and they were rightly considered senior to K – Appellants collectively sought seniority over K and the education authorities are supporting the Appellants – Held: The general principle of service jurisprudence is that the time spent in the immediate superior grade on stop gap or ad hoc basis ought not to be computed for determining the length of service of an incumbent in that cadre – Computation of the appellant's period of service in the feeder grade can take place only from the date of their regular appointment - The appellants had entered the service as lecturer on contractual basis in the year 1992-93 around the same time K had joined as senior lecturer, also on contract basis - For the purpose of determining the length of service in the feeder posts as contained in Schedule II of the 2003 Rules (Eligibility conditions for the post of senior lecturer- 75% of the post of Senior Lecturer fallen vacant in a calendar year shall be filled on promotion from amongst the serving candidates who have rendered continuous service of 5(five) years in the grade of Research Associate/ Assistant Planning Officer/ Assistant Project Officer/ Lecturers in DIET), the time spent on contractual basis cannot be factored in – Appellants completed three years of service in the feeder grade on operationalisation of 2003 Rules on 30<sup>th</sup> April, 2007 but the said Rules seek to give them regularisation in the cadre of senior lecturer from 2003 and 2001 respectively – Their service in feeder grade do not meet the required stipulation of five years period – No reason to interfere with the judgment under appeal.*
- B
- C
- D
- E

**Dismissing the appeal, the Court**

**F HELD:**

- 1.1 The general principle of service jurisprudence is that the time spent in the immediate superior grade on stop-gap or ad-hoc basis ought not to be computed for determining the length of service of an incumbent in that cadre. This is of course, subject to any contrary provision made in the applicable Rules itself. But no such contrary provision has been shown to us at the time of hearing of this appeal on behalf of the Appellants or the State. Thus, computation of the Appellants' period of service in the feeder grade can take place only from the date of their regular appointment in that cadre. [Para 12][504-F-G]**
- G
- H

1.2 The Appellants had entered the service as lecturer on contractual basis in the year 1992-93 around the same time K had joined as senior lecturer, also on contract basis. For the purpose of determining the length of service in the feeder posts as contained in Schedule II of the 2003 Rules, the time spent on contractual basis cannot be factored in. If that yardstick is applied, then K's case for seniority in the grade of senior lecturer will have to be computed from the year 1993 only. Even if we proceed on the basis that the retrospective effect given to regularisation of the Appellants in the post of lecturer is valid, then also, 15th January 2001 becomes the starting point for calculating five years of service length in the feeder cadre. They were given promotion on officiating basis as senior lecturers with effect from 14th November 2003 (for A1 and A2) and 20th January 2001 (for A3 and A4). Thus, the requisite five year period could not have been completed by any of them if the retroactivity of their regularisation order in the post of senior lecturer is to be accepted. The period spent in a promotional post on officiating basis cannot be permitted to be factored in for calculating length of service in a particular post. Unless the Rules otherwise provide, officiation in a particular post cannot encadre the incumbent in that post. [Para 14][505-D-G]

1.3 In the present appeal, one of the eligibility criterion is five years continuous service in the feeder post. We cannot ignore this factor and proceed on the basis as if the term continuous service is being construed only for determining inter-se seniority in the promotional post. We are testing here if the Appellants' entry in the promotional cadre was as per the eligibility criteria or not. In our opinion, it was not. To hold otherwise would require entire stretch of K's service in the post of senior lecturer since 1993 to be taken into account for determining the inter-se seniority among the Appellants and K. [Para 15][506-D-F]

*Union Public Service Commission v. L.P. Tiwari and Ors.* (2006) 12 SCC 317 : [2006] 9 Suppl. SCR 271; *Union of India (UOI) and Ors. v. S.K. Goel and Ors.* (2007) 14 SCC 641 : [2007] 2 SCR 432; *Badrinath v. Government of Tamil Nadu and Ors.* (2000) 8 SCC 395 : [2000] 3

H

- A **Suppl. SCR 573**; *The Direct Recruit Class-II Engineering Officers' Association and Ors. v. State of Maharashtra and Ors.* (1990) 2 SCC 715 : [1990] 2 SCR 900; *Swapan Kumar Pal and Ors. v. Samitabhar Chakraborty and Ors.* (2001) 5 SCC 581 : [2001] 3 SCR 641; *State of Rajasthan and Ors. v. Jagdish Narain Chaturvedi* (2009) 12 SCC 49 : [2009] 8 SCR 1011; *Amarjeet Singh and Ors. v. Devi Ratan and Ors.* (2010) 1 SCC 417 : [2009] 15 SCR 1010; *Malook Singh and Ors. v. State of Punjab and Ors.* (2021) SCC OnLine SC 876; *Girish Kumar v. State of Maharashtra and Ors.* (2019) 6 SCC 647 : [2019] 7 SCR 881 – referred to.
- B
- C

Case Law Reference

- |   |                         |             |         |
|---|-------------------------|-------------|---------|
|   | 2006 (9) Suppl. SCR 271 | referred to | Para 7  |
| D | [2007] 2 SCR 432        | referred to | Para 7  |
|   | [2000] 3 Suppl. SCR 573 | referred to | Para 7  |
|   | [1990] 2 SCR 900        | referred to | Para 12 |
|   | [2001] 3 SCR 641        | referred to | Para 12 |
| E | [2009] 8 SCR 1011       | referred to | Para 12 |
|   | [2009] 15 SCR 1010      | referred to | Para 12 |
|   | [2019] 7 SCR 881        | referred to | Para 15 |

- F CIVIL APPELLATE JURISDICTION: Civil Appeal No. 7166 of 2022.

From the Judgment and Order dated 04.10.2019 of the High Court of Gauhati in WA No. 364 of 2017.

- G Ms. V. Mohana, Sr. Adv., Kaushik Choudhury, Pawanshree Agrawal, Chetan Joshi, Ms. Neha Buttan, Advs. for the Appellants.
- Ms. K. Enatoli Sema, Ritesh K. Chowdhary, Kedar Nath Tripathy, Siddhartha Jha, Advs. for the Respondents.

H

The Judgment of the Court was delivered by

A

**ANIRUDDHA BOSE, J.**

Leave granted.

2. The origin of the controversy giving rise to the present appeal goes back to the year 2007 and there have been several rounds of litigations over the issue which we shall briefly narrate in the subsequent paragraphs of this judgment. The contesting parties in this appeal are the appellants and the respondent no.4 (Keruupfeu – “K”). The educational authorities of the State of Nagaland, who are also respondents in this appeal are supporting the appellants. The dispute is on the question of seniority the appellants and K in the cadre of senior lecturer under the State Council of Educational Research and Training Service (SCERT), Department of Education, Government of Nagaland. The appellants are collectively seeking seniority over K.

B

C

3. We are giving below a table showing the career graph of K and the four appellants (henceforth referred to as A1, A2, A3 and A4 respectively in descending order from the table) in their respective cadres:-

D

Name	Parties	Date of Appointment	Date of Regularisation as Lecturers/Senior Lecturer	Date of Temporary Promotion as Senior Lecturer	Date of Regularisation as Senior Lecturer
Smt. Imlikokla Longchar	Appellant no.1	30.10.1992 Lecturer on contract	28.03.2001 with effect from 15.01.2001 regularised as lecturer	20.11.2003 with effect from 14.11.2003	08.11.2007 with effect from 14.11.2003
Smt Atula Aier	Appellant no.2	30.10.1992 Lecturer on contract	28.03.2001 with effect from 15.01.2001 regularised as lecturer	20.11.2003 with effect from 14.11.2003	08.11.2007 with effect from 14.11.2003
Shri Limatoshi	Appellant no.3	18.02.1993 Lecturer on contract	28.03.2001 with effect from 15.01.2001 regularised as a lecturer	20.11.2003 with effect from 20.01.2001	08.11.2007 with effect from 20.01.2001
Smt Alemia Jamir	Appellant no.4	31.03.1993 Lecturer on contract	28.03.2001 with effect from 15.01.2001 regularised as lecturer	20.11.2003 with effect from 20.01.2001	08.11.2007 with effect from 20.01.2001
Smt Keruupfeu	Respondent no.4	30.03.1993 Senior Lecturer on contract	March 2005 with effect from 16.01.2004 regularised as Sr lecturer	Was appointed in this post on contract	–

E

F

G

H

- A 4. Draft seniority list as on 1<sup>st</sup> July 2006 was circulated by the authorities in which the K was shown below the appellants. K's objection to this seniority list was mainly on the point that the appellants could not be positioned above her as the dates of entry of the appellants into the cadre of senior lecturer was subsequent to her entry into the said cadre.
- B The appellants initially came to be senior lecturer on the basis of their officiating promotions on 20<sup>th</sup> November 2003 with effect from 14<sup>th</sup> November 2003 (for A1 and A2) and 20<sup>th</sup> January 2001 (for A3 and A4) whereas K's regularisation in the post in question was with effect from 16<sup>th</sup> January 2004. K's regular promotion in that cadre was before the actual dates of regularisation of the appellants in the subject post. The
- C appellants' regularisation in the said posts was made in the year 2007, with earlier effect as would be evident from the above-referred table. K's representation was rejected and final seniority list was published on 17<sup>th</sup> November 2006 in terms of the draft list. As per a Cabinet Memorandum no. EDS/SCERT-15/2004 ("Memorandum") issued in the
- D month of March 2005, regularisation recommendation of K was made with effect from 16<sup>th</sup> January 2004 as she had completed more than ten years' service in the department. This appears to have had been subsequently approved and notified. We also find from this Memorandum that she was recommended for regularisation on the basis of a suitability test. The said Memorandum, inter-alia, carried the following stipulation:-
- E *"4(2). There are some regular lecturers who were given officiating promotions to the posts of Sr. Lecturers subject to regularization by the DPC. This group of officers would be senior to those of contract appointees and deputationists."*
- (quoted verbatim from the paperbook)**
- F 5. The Nagaland State Council on Educational Training Service Rules, 2003 ("2003 Rules") was made under the provisions of Article 309 of the Constitution of India and these Rules became operative from 30<sup>th</sup> April 2007. Rule 3 thereof reads:-
- G *"3. CONSTITUTION OF SERVICE*
- The service shall consist of the following persons namely:*
- (i) Persons who, at the commencement of these rules are holding substantively the posts specified in Schedule-I.*
- (ii) Persons recruited to this service before the commencement of these rules.*
- H

(iii) Persons recruited to this service in accordance with provisions of these rules.” A

Schedule II to these Rules carry the requirements pertaining to various posts within the said service. Eligibility conditions for the post of senior lecturer appear in Serial 4 thereof. It is recorded in the said Schedule:- B

### SCHEDULE-II

(See Rule-3)

#### The Nagaland State Council of Educational Research & Training C

Sl. No	Designation of posts	Percentage of post(s) to be filled up		Required Educational Qualification	Remarks
		Departmental promotion	Direct recruit through NPSC		
1	2	3	4	5	6
1	Director	100%	X	M.A./M.Sc./M.Com with B.Ed or equivalent professional course not less than 9 months.	The post of Director will be filled up by promotion from amongst the confirmed Additional Directors who had rendered not less than 2(two) years in the cadre. The selection shall on merit cum seniority D
2	Joint Director	100%	X	M.A./M.Sc./M.Com with B.Ed or equivalent professional course not less than 9 months.	The post of Joint Director will be filled up by promotion from amongst the confirmed Deputy Directors/Senior Academic Officers/Principals DIETs who has completed 5 years in the cadre on the basis of merit cum seniority. E
3	Deputy Director/Sr. Academic Officer/ Principal DIETs	100%	X	M.A./M.Sc./M.Com with B.Ed or equivalent	The post shall be filled up from amongst the confirmed Readers Vocational Guidance and Counseling Officer/Project Coordinator/Senior Lecturers DIETs who have at least completed 5 years of continuous service in the cadre. F

G

H

A	4	Readers/ Sr. Lecturer/ Research Officer/ Vocational Guidance and Counselling Officer Consultant	75%	25%	M.A./M.Sc./M.Com with B.Ed	on the basis of merit cum seniority. (a) 75% of the post of Reader/Senior Lecturer/Research Officer/ Vocational Guidance and Counselling Officer fallen vacant in a calendar year shall be filled on promotion from amongst the serving candidates who have rendered continuous service of 5(five) years in the grade of Research Associate/ Assistant Planning Officer/ Assistant Project Officer/ Lecturers in DIETs. (b) 25% of the vacant post falling in a calendar year shall be filled up by direct recruit through NPSC.
B						
C						
D						
E	5	Research Associate/ Assistant Project Officer/ Assistant Planning Officer/ Lecturer DIET	75%	25%	M.A./M.Sc./M.Com with B.Ed	(a) 75% of vacant post fallen vacant in a calendar year shall be filled by promotion from the serving confirmed TRAs/Trainer in Fine Arts who has already completed atleast 7(seven) years in the grade on the basis of merit cum seniority. (b) 25% of the vacant post shall be filled up by open competition through NPSC.
F						
G	6	Training- cum- Research Assistant/ Trainer in Fine Arts/Work Experience Teacher	X	100%	M.A./M.Sc./M.Com with B.Ed	100% of the post fallen in a calendar year will be filled by open competition through NPSC.

6. The said Rules however were not operational when regularisation of K took place in the post of senior lecturer. On the other hand, the appellants' regularisation as senior lecturer came after the

H



2003 Rules had come into existence on 30<sup>th</sup> April 2007. Learned counsel for the appellants had argued that when K joined as senior lecturer, she did not have B.Ed degree. It is not in dispute that before her regularisation, she had obtained the B.Ed. degree. That factor, in any event, is not of much relevance so far as the present proceeding is concerned as nothing has been shown to us to demonstrate that she had any eligibility deficiency on account of not having B.Ed. degree at the time she was inducted in the post of senior lecturer on contractual basis. In any event, her eligibility to be a senior lecturer is not directly in issue in this appeal. A  
B

7. Consistent stand of the Departmental Promotion Committee (“DPC”) from the year 2007 has been that the seniority position of the appellants ought to be computed taking into account the period they were officiating in the posts of senior lecturer, which were prior to the date of regularisation of K in the same post. In support of this argument, clause 4.2 of the Memorandum referred to in the earlier part of this judgment has been relied on by the appellants as also the State. This was also the view of the DPC and was confirmed in their meeting held on 2<sup>nd</sup> November 2015. There are authorities which calls for limited interference by judicial review with regard to recommendations of the DPC. This has been held so by this Court in the cases of **Union Public Service Commission vs. L.P. Tiwari and Others** [(2006) 12 SCC 317] and **Union of India & Another vs. S.K. Goel and Others** [(2007) 14 SCC 641]. But the principle of non-interference is not absolute. In exceptional cases, judicial intervention becomes inevitable, as held in the case of **Badrinath vs. Government of Tamil Nadu and Others** [(2000) 8 SCC 395]. C  
D  
E

8. The point of taking off, so far as the proceedings giving rise to this appeal is concerned, is two Writ Petitions filed by K in the Gauhati High Court. These were registered as W.P (C) No. 169 (K) of 2016 and W.P (C) No. 231(K) of 2015. We are avoiding reference to rounds of litigations earlier as those cases do not have direct bearing on the dispute which we are to adjudicate on in this appeal. In these Writ Petitions, K had challenged the DPC proceedings and she also prayed for reconvening of DPC for the purpose of reconsidering the recommendation for regularisation of the four appellants in terms of the 2003 Rules. K had also assailed the promotion of the four appellants in the posts of senior lecturer. Her main contention was that their ad-hoc period in the feeder cadre could not be counted for the purpose of eligibility for promotions. F  
G  
H

A           9. This was the third round of litigations touching upon the same  
controversy. The first set was a writ petition filed by K, being W.P. (C)  
No.173(K) of 2007. This writ petition was dismissed on technical ground.  
It appears that another Writ petition [W.P. (C) No.284(K) of 2007] was  
B also instituted by K questioning regularisation of the appellants as senior  
lecturer. The second writ petition was also dismissed. K had carried  
both the orders of dismissal to the Appellate Bench. K, however, was  
partially successful in the second round of litigation initiated by writ petition  
registered as W.P (C) No. 126(K) of 2014. In this writ petition, she had  
asked for invalidation of the recommendation of the DPC in their meeting  
held on 3<sup>rd</sup> March 2014. In this meeting, the DPC had reaffirmed their  
C recommendation made on 4<sup>th</sup> October 2007 seeking to regularise the  
service of the appellants in the posts of senior lecturer from different  
dates prior to the date on which service of K was regularised in the  
same post. That was accepted by the State Government. The High Court  
essentially remanded the matter to the DPC by setting aside their order  
D holding that the DPC recommendation did not reflect consideration of  
the 2003 Rules. Following the direction contained in the aforesaid  
judgment, a fresh DPC meeting was held on 2<sup>nd</sup> November 2015 to  
which we have already referred. This meeting was held mainly to review  
the decisions of the DPC taken in their meetings on 4<sup>th</sup> October 2007  
and 3<sup>rd</sup> March 2014, which were set aside by the High Court. But the  
E DPC essentially retained their earlier decision concerning seniority list  
giving its own explanation of there being compliance of the 2003 Rules.

10. In the appeals arising out of W.P. (C) No. 173(K) of 2007 and  
W.P. (C) No. 284 (K) of 2007, a Division Bench of the High Court in a  
common judgment delivered on 14<sup>th</sup> September 2012, inter-alia, held:-

F           *“20. We have considered the reason as assigned by the*  
*learned Single Judge but unfortunately we cannot agree to*  
*such proposition of law. It is well settled that the*  
*recommendation of the D.P.C. is not binding upon even on*  
*the appointing authority. It is merely recommendation and the*  
G *appointing authority has ot examine the recommendation*  
*whether those were appropriate or not. The recommendation*  
*is an opinion of the expert for consideration of the appointing*  
*authority. The appointing authority thought it appropriate to*  
*reconvene the D.P.C. for arriving at a decision. It appears*  
*from the D.P.C. minutes that there was no consideration of*  
H

*the Nagaland State Council of Educational Research and Training Services Rules as was given effect from 30.04.2007 and hence the D.P.C. in all the cases made recommendation without relevant consideration of the said rules, and their consequences for far regularization of the Sr. Lecturer was concerned and treaded a wrong premise. The D.P.C. did not look into the matter whether the private respondents have completed the required continuous qualifying service of 5 years in the feeder grade or not. Apart that, the law is well settled that the executive is well within its jurisdiction to reconvene to D.P.C. but while operating any regularization retrospectively it has to take care that no prejudice is caused to the incumbent already in the cadre. Moreover, being in the grade on regular appointment. Unless the qualifying service as prescribed is complete in the grade, there cannot by any lawful consideration.*

*21. Be that as it may in this case, the question that has been taken for consideration by this Court is confined to whether the State-respondents No. 1 and 2 have acted in accordance with the provision of law while accepting the recommendation of the D.P.C. The answer is bound to in the negative. The relevant provision as to the qualifying service as appearing in the Nagaland State Council of Educational Research and Training Services Rules, 2003, as given effect from 30.04.2007, was not at all considered by the D.P.C. while making recommendations for regularization in the post of Sr. Lecture and as such both the recommendations of the D.P.C. as well as the notification, consequent thereupon, dated 08.11.2007 (Annexure-C to the Affidavit in opposition filed by the respondent No. 1.) stand quashed.*

*22. This Court would not interfere with that part of the notification whereby the private respondents have been appointed in the cadre of Lecturer. This order has to be confined for the cadre for the Sr. Lecturer only. As consequential thereof, the respondents No. 1 and 2 are directed to take immediate steps for reconvening of the D.P.C. for purpose of fresh recommendation for regularization of the private respondents in the post of Sr. Lecturer on strict*

A *observance of the rules: as provided in the schedule appended to the said Rules, 2003 (effective from 30.04.2007) and thereafter to issue the appropriate order of promotion in the post of the Sr. Lecturer.*

B *23. As corollary to this, the impugned seniority list is also struck down. The seniority position can only be settled after the reconvening of the D.P.C. for promotion to the post of Sr. Lecturer in terms of the provisions of the Nagaland State Council of Educational Research and Training Services Rules, 2003.*

C *24. It is made clear that the private respondents who are now occupying the post of Principal of DIETs on officiating basis would be allowed to continue in their positions but that shall remain subject to the outcome of the recommendation of the D.P.C. and the consequential orders of promotion as would be made by the respondents No. 1 and 2.”*

D **(quoted verbatim from the paperback)**

E *11. In the two writ petitions registered as W.P.(C) No. 231 (K) of 2015 and W.P. (C) 169 (K) of 2016, K had sought to quash the fresh DPC recommendations coming from the meeting held on 2<sup>nd</sup> November 2015. The earlier seniority position of K was retained by the DPC in their recommendation made in this meeting. The Single Judge allowed the writ petitions against which the appellants appealed before the Division Bench. The Division Bench dismissed the appeals, holding:-*

F *“34. It is reiterated, at the cost of repetition, that the Division Bench had, in clear terms, directed the State respondent nos. 1 and 2 to take immediate steps for reconvening of the DPC for the purpose of fresh recommendation for regularisation of the appellants in the post of Senior Lecturer in strict observance of the rules, as provided in the Schedule appended to the NSCERT, Service Rules, 2003, and thereafter, to issue appropriate order of promotion in the post of Senior Lecturer. After noticing the provisions in the NSCERT Service Rules, 2003, the Division Bench had observed that continuous qualifying service of 5 (five) years in the feeder grade of Lecturer is an essential requirement for the purpose of promotion to the post of Senior Lecturer. It was in that context*

H

*the Division Bench had observed that the DPC when it held its meeting on 04.10.2007, did not take into consideration the NSCERT Service Rules, 2003 which had come into effect in the meantime from 30.04.2007, as consideration of the said Rules was relevant so far as regularisation of the appellants in the cadre of Senior Lecturer. The Division Bench had further observed that while operating any regularization retrospectively, care has to be taken that no prejudice is caused to the incumbent already in the cadre. Though the Division Bench had not indicated in express terms about the incumbent stated to be already in the cadre but it had impliedly referred to the respondent no.4 as the incumbent already in the cadre and directed the State respondents not to cause any prejudice to the said incumbent. As already noted above, the Division Bench had considered the status of the respondent no. 4 in the post of Senior Lecturer and did not observe any irregularity in the matter of regularisation of service of the respondent no. 4 in the post of Senior Lecturer w.e.f. 16.01.2004. In view of such settled position, it is no longer open for the appellants to attempt any other interpretation. The said position had been reiterated by the learned Single Judge in the judgment and order dated 03.08.2015 when the DPC held on 03.03.2014 reiterated its earlier decision taken in the DPC meeting held on 04.10.2007, by setting aside the said Minutes dated 03.03.2014. The said position was accepted by the present appellants and the State respondents as they had never assailed the same. The contention raised by the present appellants and the State respondents to the effect that the NSCERT Service Rules, 2003 were not in force in the year 2007 when the promotions were given to the appellants, was negated by the learned Single Judge in W.P.(C) No. 126(K)/2014. The learned Single Judge in its judgment and order dated 03.08.2015, had set aside the impugned recommendation of the DPC dated 03.03.2014 with the direction to hold the DPC afresh in accordance with the direction given by the Division Bench on 14.09.2012.*

*35. The contention raised in support of the decisions taken in the meeting of the DPC held on 02.11.2015 is not acceptable in view of the authoritative pronouncement of the*

A *Division Bench in its order dated 14.09.2012. The DPC cannot*  
*overrule what had been pronounced by the Division Bench*  
*and reiterated by the Single Judge of this Court, as mentioned*  
*above, and the DPC cannot re-interpret the position what has*  
 B *already been settled. Thus, the learned Single Judge after*  
*due consideration of the matter in its entirety, is absolutely*  
*justified in W.P. (C) No. 231(K)/2015 in setting aside the*  
*proceedings of the DPC held on 02.11.2015 by holding that*  
*the same were in clear infraction of the judgment and order*  
*dated 14.09.2012 passed in W.A. No. 20(K)/2011 and W.A.*  
*No. 21(K)/2011, as has been quoted above.”*

C **(quoted verbatim from the paperbook)**

12. The facts which emerge from the sets of events determining seniority positions of the appellants and K in the subject posts are that at the time of regularisation of K, the 2003 Rules was not in existence. So far as the appellants are concerned, their regularisation in the posts in which they were officiating was effected on 8<sup>th</sup> November 2007. By that time the 2003 Rules had become operational. Once the said Rules became operational, the requirement of five year service in the feeder grade also become applicable to be eligible for promotion in the next higher grade. Our attention had been drawn to Clause 4.2 of the Memorandum issued in the month of March 2005 through which K was regularised in the post of senior lecturer to contend that K could not object to the appellants being made senior. We shall deal with this aspect of the appellants’ case in the next paragraph of this Judgment. The general principle of service jurisprudence is that the time spent in the immediate superior grade on stop-gap or ad-hoc basis ought not to be computed for determining the length of service of an incumbent in that cadre. This is of course, subject to any contrary provision made in the applicable Rules itself. But no such contrary provision has been shown to us at the time of hearing of this appeal on behalf of the appellants or the State. Thus, computation of the appellants’ period of service in the feeder grade can take place only from the date of their regular appointment in that cadre. This view has been taken by the Constitution Bench of this Court in the case of **Direct Recruit Class II Engineering Officers’ Association vs. State of Maharashtra & Others** [(1990) 2 SCC 715], **Swapan Kumar Pal and Others vs. Samitabhar Chakraborty and Others** [(2001) 5 SCC 581], **State of Rajasthan and Others vs. Jagdish**

H

**Narain Chaturvedi** [(2009) 12 SCC 49], **Amarjeet Singh and Others vs. Devi Ratan and Others** [(2010) 1 SCC 417], and **Malook Singh and Others vs. State of Punjab and Others** [(2021) SCC OnLine SC 876]. A

13. At the time the appellants were regularised with retrospective effect, the 2003 Rules had come into existence. Thus, the requirement of the Schedule to the said Rules framed under Article 309 of the Constitution of India could not be overridden by a clause contained in the Memorandum promoting K. On the other hand, the 2003 Rules ought to supersede any contrary provision that may be contained in an earlier legal instrument. The appellants cannot claim any vested legal right on the basis of certain conditions contained in K's promotional recommendation. B C

14. The appellants had entered the service as lecturer on contractual basis in the year 1992-93 around the same time K had joined as senior lecturer, also on contract basis. For the purpose of determining the length of service in the feeder posts as contained in Schedule II of the 2003 Rules, the time spent on contractual basis cannot be factored in. If that yardstick is applied, then K's case for seniority in the grade of senior lecturer will have to be computed from the year 1993 only. Even if we proceed on the basis that the retrospective effect given to regularisation of the appellants in the post of lecturer is valid, then also, 15<sup>th</sup> January 2001 becomes the starting point for calculating five years of service length in the feeder cadre. They were given promotion on officiating basis as senior lecturers with effect from 14<sup>th</sup> November 2003 (for A1 and A2) and 20<sup>th</sup> January 2001 (for A3 and A4). Thus, the requisite five year period could not have been completed by any of them if the retroactivity of their regularisation order in the post of senior lecturer is to be accepted. The period spent in a promotional post on officiating basis cannot be permitted to be factored in for calculating length of service in a particular post. Unless the Rules otherwise provide, officiation in a particular post cannot encadre the incumbent in that post. We have already referred to different authorities laying down this proposition of law earlier in this judgment. Birth in the cadre takes place only upon regularisation in a grade and there is no provision in the 2003 Rules which prescribes encadring a person in the post of senior lecturer during the period such person officiates in the said post. So far as length of service in feeder post is concerned, that also has to exclude the D E F G H

- A contractual period during which the appellants served as lecturers, once we apply this principle.

15. The appellants had no doubt completed three years of service in the feeder grade on operationalisation of 2003 Rules on 30<sup>th</sup> April 2007. But so far, the said Rules seek to give them regularisation in the cadre of senior lecturer with effect from 2003 and 2001 respectively, their service in the feeder grade do not meet the required stipulation of five year period. Judgment of a Coordinate Bench in the case of **Girish Kumar vs. State of Maharashtra and Others** [(2019) 6 SCC 647], construed the term ‘continuous service’ in relation to the specific rules this Court was dealing with in that case. So far as the present appeal is concerned, the ratio of this judgment would not be applicable because the appellants here did not fulfil the eligibility requirement for being promoted to the post of senior lecturer. If retroactivity of order is given effect to for calculating the officiating period, as we have already observed, time spent as officiating senior lecturer could not be deemed to be the dates of their birth in the cadre of senior lecturer. In **Girish Kumar** (supra), it has also been held that such interpretation shall not be applicable while considering eligibility criteria. In the present appeal, one of the eligibility criterion is five years continuous service in the feeder post. We cannot ignore this factor and proceed on the basis as if the term continuous service is being construed only for determining inter-se seniority in the promotional post. We are testing here if the appellants’ entry in the promotional cadre was as per the eligibility criteria or not. In our opinion, it was not. To hold otherwise would require entire stretch of K’s service in the post of senior lecturer since 1993 to be taken into account for determining the inter-se seniority among the appellants and K.

16. For these reasons we do not wish to interfere with the judgment under appeal. The authorities to take steps on the basis of seniority positions of the appellants and the respondent no. 4 in terms of this judgment. The appeal is dismissed.

- G 17. Pending application(s), if any, shall stand disposed of.

18. There shall be no order as to costs.

Ankit Gyan  
(Assisted by : Ajay, LCRA)

Appeal dismissed.

H