

A MALOOK SINGH AND OTHERS

v.

STATE OF PUNJAB AND OTHERS

(Civil Appeal Nos 6026-6028 of 2021)

B SEPTEMBER 28, 2021

**[DR. DHANANJAYA Y. CHANDRACHUD,
VIKRAM NATH AND B V NAGARATHNA, JJ.]**

C *Service Law – Determination of seniority – Ad hoc service, if counted for – Doctrine of res judicata vis-à-vis law of precedent – In view of an earlier writ petition filed by appellants-ad hoc employees against regularly recruited employees appointed after them, seniority list was redrawn and the appellants were granted seniority w.e.f. dates of their initial appointment by including the period of ad hoc service – Fixation of seniority challenged by private respondents who were not party to the earlier writ petition but were adversely affected – Allowed by Single Judge – Appeals, dismissed by Division Bench – Held: In the earlier writ petition, reliance placed by Single Judge on Direct Recruit Class II Engineering Officers’ Association v. State of Maharashtra reported as [1990] 2 SCR 900 to hold that ad hoc service should be counted for conferring the benefit of seniority is misplaced – In the present case, initial appointment was supposed to be a stop gap arrangement besides being not in accordance with the rules, thus the ad hoc service cannot be counted for the purpose of seniority, as held in Direct Recruit case – Further, a binding decision of the court which has attained finality would bind only the parties to the proceedings inter-se – Seniority list prepared pursuant to the earlier judgment would not bind those who were not parties to the earlier proceedings and were adversely affected – In view of the express terms of the regularization policy in the present case, seniority would date with effect from the date of regularization – However, during the pendency of the present proceedings, the appellants, the private respondents as well as the appellants in companion appeals received promotions from time to time and have retired from service, thus, the pensionary benefits being disbursed to them not to be disturbed and no recoveries made – Constitution of India – Art.142 – Punjab Civil Secretariat (State Service Class III) Rules 1976.*

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Disposing of the appeals, the Court

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HELD: 1.1 As a matter of first principle, the view which has been adopted in the impugned judgment of the Division Bench of the High Court cannot be faulted. The policy for regularization issued on 3 May 1977 is clear in regard to the date of regularization, the principle for reckoning seniority and the basis on which seniority should be reckoned inter se between persons belonging to the group of *ad hoc* employees who were regularized. The policy clearly specifies that regularization would be granted to persons who had fulfilled a minimum of one year service as on 31 March 1977. As regards seniority, clause 5(a) specifies that the seniority, upon regularization would date back to 1 April 1977 *vis a vis* candidates appointed on a regular basis after selection through the prescribed procedure. As between *ad hoc* employees who were regularized, inter se seniority would however be based on the length of service so that a person possessing longer service would rank senior to a junior in terms of the length of service. The judgment of the Single Judge in Malook Singh's case-the earlier writ petition (Malook Singh vs. State of Punjab CWP No 2780/1980) essentially dealt with two facets. The first was that persons who were recruited after following the regular procedure for selection after the date of regularization of *ad hoc* employees on 1 April 1977 could not rank senior to those who had been regularized prior to their date of appointment. The second aspect on which the Single Judge held in favour of the petitioners in CWP No 2780 of 1980 was that once regularization takes place, the length of ad hoc service must count for the determination of seniority. The second facet of the judgment of the Single Judge was specifically kept open in the Letters Patent Appeal by the Division Bench. Therefore, clearly the judgment in Malook Singh's case did not conclude the issue of whether ad hoc service would count for the purpose of determining seniority. The Special Leave Petition (SLP (C) No 7513 of 1993) against the judgment of the Division Bench was dismissed by this Court on 16 July 1993. The judgement in Malook Singh was subsequently overruled in Gurmail Singh v. State of Punjab. [Paras 8, 18, 19 and 21][1086-D; 1091-C-H; 1092-A; 1095-E-F]

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- A *Malook Singh v State of Punjab CWP No. 2780/1980;*
Gurmail Singh v. State of Punjab CWP No. 9200 of
1993 decided on 21 July 1994 – referred to.

- 1.2 The decision in Direct Recruits stands for the principle that *ad hoc* service cannot be counted for determining the seniority if the initial appointment has been made as a stop gap arrangement and not according to rules. The reliance placed by the Single Judge in the judgement dated 6 December 1991 on Direct Recruits to hold that the *ad hoc* service should be counted for conferring the benefit of seniority in the present case is clearly misplaced. The notification dated 3 May 1977 stated that the *ad hoc* appointments were made in administrative interest in anticipation of regular appointments and on account of delay that takes place in making regular appointment through the concerned agencies. In this regard, the vacancies were notified to the Employment Exchange or advertisements were issued, as the case maybe, by appointing authorities. The appointments were not made on the recommendation of the Punjab Subordinate Service Selection Board. However, subsequently a policy decision was made to regularize the *ad hoc* appointees since their ouster after a considerable period of service would have entailed hardship. Thus, the initial appointment was supposed to be a stop gap arrangement, besides being not in accordance with the rules, and the *ad hoc* service cannot be counted for the purpose of seniority. [Para 20][10936-D-E; 1095-C-E]

- F *Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra (1990) 2 SCC 715 : [1990] 2 SCR 900 – followed.*

Keshav Chandra Joshi v. Union of India (1992) 1 Suppl. SCC 272; Rashi Mani Mishra v. State of Uttar Pradesh (2021) SCC OnLine SCC 509 – relied on.

- G 2. A binding decision of the court which has attained finality would bind the parties to the proceedings inter-se. The private respondents in Malook Singh's case were persons who had been recruited after 1 April 1977 *albeit* after following a regular process of selection. The judgment, therefore, would only bind those who are parties to the proceedings. The judgment would by no means
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operate to bind others whose interest did not coincide with the private respondents who are impleaded in the proceedings. This is precisely the reason why the Single Judge in the subsequent proceedings held that the seniority list which was prepared pursuant to the earlier judgment would not operate to bind those persons who were not parties to the earlier proceedings and were adversely affected. In this backdrop, there is no reason for this Court to take a different view than that which has weighed with the High Court in coming to the conclusion that in view of the express terms of the policy of regularization, seniority would date with effect from the date of regularization. [Para 21][1096-C-F]

State of Rajasthan v. Nemi Chand Mahela (2019) 14 SCC 179 : 2019 (7) SCALE 143 – relied on.

3. The appellants and the private respondents, as well as the appellants in the companion appeals have from time to time received their promotions during the pendency of these proceedings and have retired from service. While the judgment of the Division Bench is affirmed on the issue of the principle, it is directed that the pensionary benefits which are being disbursed to the appellants shall not be disturbed. Likewise, the pensionary payments which are being disbursed to the respondents be paid over in accordance with law. No recoveries be made of any nature whatsoever from the appellants. [Paras 22, 23][1096-F-G; 1097-E-G]

Case Law Reference

[1990] 2 SCR 900 followed Para 6

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 6026-6028 of 2021.

From the Judgment and Order dated 15.03.2011 of the High Court of Punjab and Haryana at Chandigarh in L.P.A. Nos.471, 472 and 476 of 2011.

With

Civil Appeal Nos. 6024 and 6025 of 2021.

P. S. Patwalia, Sr. Adv., Ms. Pragati Neekhara, Ms. Manju Jetley, Subhasish Bhowmick, Advs. for the Appellants.

A Ms. Ranjeeta Rohatgi, Arun K. Sinha, Advs. for the Respondents.
The Judgment of the Court was delivered by
DR DHANANJAYA Y CHANDRACHUD, J.

1. Leave granted.

B 2. This batch of appeals arises from a judgment and order dated 15 March 2011 of a Division Bench of the High Court of Punjab and Haryana.

3. For convenience of reference, the facts as they emerged in the lead Civil Appeal¹ may be set out.

C 4. The appellants were appointed as clerks in 1975-1976 in the Punjab Civil Secretariat on an ad hoc basis. On 3 May 1977, their services were regularized with effect from 1 April 1977 pursuant to a policy of regularization. The policy of regularization notes that in anticipation of regular appointments, ad hoc appointments were resorted to by various
D appointing authorities in “administrative interest” after notifying the vacancies to the employment exchange or, as the case may be, by issuing advertisements. Since the ad hoc employees had acquired experience, and their ouster after a considerable period of service would entail hardship, their services were regularized, subject to certain terms and conditions. Clause (5) of the policy on regularization contained the
E following stipulations:

“5. The seniority of the ad hoc employees whose appointments are regularized in terms of the above policy shall be determined in the following manner:-

F (a) After approval by the Appointing Authority the regularization of their appointments shall date back to 1st April, 1977 from which date their seniority shall be determined vis-à-vis candidates appointed on regular basis after selection through the prescribed agencies;

G (b) The service rendered on ad hoc basis shall be taken into account for purposes of determining inter se seniority among the ad hoc employees themselves and a person having a longer service shall be senior and if the date of appointment on ad hoc basis is the same, then the older member shall be senior to a younger member.”

H ¹ CA 6026-6028/2021 @ SLP(C) 14029-14031/2011

5. From the above stipulations, it becomes evident that the regularization in terms of the policy dated 3 May 1977, was to become effective on 1 April 1977 from which date their seniority would be determined in relation to candidates who were appointed on a regular basis after following the normal procedures for selection. However, as between the ad hoc employees who were regularized, it was stipulated that service rendered on an ad hoc basis shall be taken into account so that a person having a longer service shall be senior and if the date of appointment on ad hoc basis was the same, the older member would rank senior to the younger.

6. A batch of seventy-three clerks, including the appellants, who were working in the office of the Punjab Civil Secretariat instituted a writ petition² under Article 226 to challenge the seniority position as it stood on 31 December 1978 (**Malook Singh v State of Punjab**). Besides the official respondents, twenty-seven private respondents were impleaded as parties to the writ petition. These respondents, it must be noted, were regularly appointed candidates who had been appointed after 1 April 1977. The petitioners in those proceedings claimed the benefit of ad hoc service rendered by them towards their seniority as against regularly recruited clerks appointed after them. By a judgment and order dated 6 December 1991, a Single Judge of the High Court observed that in terms of Rule 9 of the Punjab Civil Secretariat (State Service Class III) Rules 1976, the seniority *inter se* of members of a service in each cadre would be determined by the length of continuous service on a post in the cadre of service. The Single Judge held that while the petitioners before the High Court had been regularized from 1 April 1977, the private respondents were appointed subsequently. As a consequence, those who were appointed subsequently could not claim seniority over those who were regularized prior to their appointment. Besides the above finding, Single Judge held that in view of the decision of this Court in **Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra**³, once the services had been regularized they would relate back to the date of their initial appointment and the ad hoc service would have to be kept in view in determining seniority and other benefits. The petition was allowed in the above terms.

² CWP No 2780/1980

³ (1990) 2 SCC 715

A 7. The judgment of the Single Judge was carried in a Letters
Patent Appeal by the State of Punjab. The Division Bench, by its
judgement dated 4 January 1993, held that the Single Judge was justified
in coming to the conclusion that persons who had been regularized with
effect from 1 April 1977 would rank senior to those who had been
recruited after their date of regularization and to that extent the petitioners
B before the Single Judge had been correctly held to be senior to the private
respondents. Having held this, the Division Bench however clarified that
it was expressing no opinion on the second aspect which was adverted
to by the Single Judge namely, that upon regularization, the services of
the petitioners for the purpose of seniority would relate back to the date
C of their initial appointment. This question was left open to be dealt in an
appropriate case with a clarification that the judgment of the Single Judge
would not be treated as a binding precedent.

8. The Special Leave Petition⁴ against the judgment of the Division
Bench was dismissed by this Court on 16 July 1993. Contempt petitions
D were filed before the High Court for non-compliance of the judgment of
the Single Judge dated 6 December 1991. During the pendency of the
contempt petitions, the seniority list was redrawn and finalized by an
Office Order dated 14 January 1994. According to the seniority list, the
appellants to these proceedings were granted seniority with effect from
their dates of initial appointment by including the period of ad hoc service.
E The contempt petitions were disposed of by the High Court by its order
dated 12 August 1994.

9. A batch of writ petitions⁵ was instituted before the High Court
to challenge the fixation of seniority. The persons who instituted these
petitions had a grievance that the fixation of seniority had been made
without affording a hearing to them and that the judgment of the High
Court dated 6 January 1991 would not bind them since they were not
parties to the earlier writ petition⁶. The State of Punjab contested the
proceedings. The Single Judge, by an order dated 5 January 2011, allowed
the writ petitions which were instituted by the private respondents. The
F Single Judge came to the conclusion that the judgment in CWP No 2780
G of 1980 (**Malook Singh v. State of Punjab**) had been overruled by a

⁴ SLP (C) No 7513 of 1993

⁵ Writ Petition Nos 2607 of 1994, 1702 of 1994 and 2341 of 1995

⁶ CWP No 2780 of 1980

Division Bench of the High Court in **Gurmail Singh v. State of Punjab**⁷. A
The Single Judge also noted that another writ petition⁸ was filed before
the High Court, which was allowed by a Single Judge of the High Court
on 24 December 1997, on the basis of the decision in **Malook Singh's**
case. Against the said judgment, a Letters Patent Appeal⁹ was preferred,
which was allowed on 8 January 1999, adverting to the fact that in B
Gurmail Singh's case, the decision in **Malook Singh** had been
overruled. Moreover, it was also observed that in the Letters Patent
Appeal, which was filed before the Division Bench in **Malook Singh's**
case, it was specifically observed that the judgment of the Single Judge
would not be cited as a precedent to determine whether ad hoc service C
would be reckonable for the purpose of seniority. Against the judgement
of the Division Bench of the High Court, Special Leave Petitions¹⁰ were
filed before this Court which were dismissed in limine on 19 July 1999.
After adverting to these developments, the Single Judge came to the
conclusion that it was a well settled principle that where the initial D
appointment is made without following due procedure in accordance
with the mandate of Articles 14 and 16, ad hoc service would not count
for the determination of seniority. The Single Judge held that the decision
in **Malook Singh's** case having attained finality would bind the State,
the petitioners and the private respondents who were parties to that
proceeding. The rights of parties which were determined by a conclusive E
judgment could not be thus reopened as between the parties to that
proceeding. Consequently, the Single Judge held that as between the
parties to the decision in **Malook Singh's** case, the judgment would be
treated as final and binding. On the other hand, the persons who were
appointed by a due process of selection and were not parties to the
earlier proceedings in **Malook Singh's** case would not be bound by the F
decision.

10. Following the judgment of the Single Judge, Letters Patent
Appeals¹¹ were carried to the Division Bench. The Division Bench by
its judgment and order dated 15 March 2011, dismissed the Letters Patent
Appeals. The Division Bench has held that ad hoc service followed by G
regularization would not qualify for the purpose of fixing seniority in

⁷ CWP No. 9200 of 1993 decided on 21 July 1994.

⁸ CWP No 16488 of 1995

⁹ LPA No 133 of 1998

¹⁰ SLP No 8534-35 of 1999

¹¹ LPA Nos 471, 472 and 476 of 2011

A view of the law settled by the Supreme Court. At the same time, the judgment in **Malook Singh's** case would nonetheless enure to the benefit of those who were parties to the proceedings but would not adversely affect the rights of others who were not parties to the proceedings. The judgment of the Division Bench has given rise to the present appeal.

B 11. While entertaining the Special Leave Petition initially on 6 June 2011, an order of status quo was passed while issuing notice. Subsequently, on 27 April 2012, the order was modified since the State Government submitted to the Court that there were vacancies in the cadre of Under Secretaries and Deputy Secretaries which were required to be filled up. The application for modification was allowed by permitting
C the State government to fill up the available vacancies on an ad hoc basis. At that stage, the Court was apprised of the fact that out of eighteen petitioners, only two petitioners who were working as Superintendents at the relevant time were eligible for promotion against the vacancies. During the past decade that these proceedings have remain pending
D before this Court, all the appellants as well as the respondents have been promoted and almost all of them have, as a matter of fact, retired from service.

12. Mr P S Patwalia, learned senior counsel appearing on behalf of the appellants in the appeal arising out of the lead Special Leave
E Petition¹² has urged the following submissions:

- (i) All the appellants have, as a matter of fact, received their promotions during the pendency of the proceedings and have retired, beginning well over a decade ago;
- (ii) When the appellants were appointed on an ad hoc basis,
F the initial appointment, strictly speaking cannot be construed to be of a back door entry having regard to the fact that the employment exchange was notified and they were selected by regular selection committees though not by the Punjab Subordinate Service Selection Board¹³;
- (iii) The High Court has correctly come to the conclusion that
G as between the parties to the decision, in **Malook Singh's** case, the judgment would continue to bind notwithstanding

¹² SLP (C) Nos 14029-14031 of 2011

H ¹³ PSSSB

the fact that it has been subsequently disapproved in another judgment of High Court; and A

- (iv) In consequence, insofar as the State is concerned, it would be bound to give effect to the decision in **Malook Singh** and at this stage, all that the appellants would seek is that their pensionary payments be duly protected. B

13. On the above premises, Mr Patwalia, learned senior counsel submits that at this length of time, it would be manifestly in the interest of justice if the pensionary benefits which are being drawn by the appellants are protected and a direction is issued by this Court in the exercise of its jurisdiction under Article 142 of the Constitution restraining the State from making any recoveries in respect of the payments which have already been made. C

14. Ms Anusha Nagarajan, counsel appearing on behalf of the State of Punjab has on the other hand, urged the following submissions:

- (i) Though the judgment of the Single Judge in **Malook Singh's** case had held that the benefit of ad hoc service must be counted for the purpose of determining seniority of those who are regularized with effect from 1 April 1977, this was specifically kept open by the Division Bench in the Letters Patent Appeal and as a consequence, the claim for counting ad hoc service in determining seniority was not decided; D E
- (ii) The order of regularization dated 3 May 1977, specifically provides that (a) seniority shall be reckoned from 1 April 1977; and (b) as between ad hoc employees whose services were regularized, their inter se seniority would be based on the length of ad hoc service; F
- (iii) In CWP No 2780 of 1980, the respondents were directly recruited candidates who were appointed after 1 April 1977, as a consequence of which, the Single Judge had come to the conclusion that the persons who were regularized with effect from 1 April 1977 would rank senior to those who were recruited after that date; G
- (iv) As a matter of fact, in the first round of proceedings, persons who were directly recruited and appointed prior to 1 April H

A 1977 were not impleaded as parties to the proceedings and clearly, they would not be governed by the earlier judgment which would not bind them; and

(v) In this backdrop, having regard to the well settled position in law, it was correctly held by the Single Judge of the High Court that ad hoc service of persons who had originally been appointed without following due procedure would not count for the purpose of seniority.

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15. Learned counsel consequently submitted that having due regard to the fact that the principle which was sought to be espoused by the Single Judge in **Malook Singh's** case – that ad hoc appointment would count for the purpose of seniority has been overruled not only by the High Court subsequently, but does not reflect the correct position in law, the impugned judgment of the Division Bench would need to be sustained. At the same time, learned counsel has expressed before the Court the practical difficulty of redrawing and revising the seniority list at this length of time in respect of persons who were appointed as far back as in 1977, all of whom have retired from service after receiving their promotion orders.

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16. During the course of these proceedings, we have also heard Mr Arun K Sinha, learned counsel appearing on behalf of some of the contesting respondents and Mr Surjit Singh Swaich, learned counsel appearing on behalf of the appellants in the companion appeals. Insofar as the private respondents represented by Mr Sinha are concerned, it may be noted that their grievance specifically is in regard to the manner of appointment of the appellants. In the counter affidavit which has been filed in these proceedings on their behalf, it has been stated that the policy of the State of Punjab dated 3 May 1977 regularizing the services of the ad hoc employees with effect from 1 April 1977 clarified that seniority shall be determined with effect from that date. During the period from 1 April 1977 (the effective date of regularization) and 3 May 1977 (the date of issuing the order for regularization), some clerks had joined on different dates on the recommendations of the PSSSB. Though the recommendations of the PSSSB were made on diverse dates between December 1976 and April 1977, they had joined service before the issuance of the notification of regularization in the cadre of clerks as it stood on 31 December 1978. On these grounds, it has been submitted that the

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appellants ought not to rank higher in seniority on the basis of the length of ad hoc service. A

17. Mr Surjit Singh Swaich, learned counsel has appeared on behalf of a batch of persons who were petitioners before the High Court in another batch of writ petitions¹⁴. It may be noted at this stage, that they had sought seniority on the basis of the judgment in **Malook Singh's** case. The High Court has rejected their claim on the ground that **Malook Singh** is not an authority for the proposition that ad hoc service prior to the date of regularization should count in the effectuation of seniority and, in any event, the issue has been kept open in the judgment of the Division Bench in a Letters Patent Appeal against the judgment of the Single Judge. B C

18. As a matter of first principle, the view which has been adopted in the impugned judgment of the Division Bench of the High Court cannot be faulted. The policy for regularization issued on 3 May 1977 is clear in regard to the date of regularization, the principle for reckoning seniority and the basis on which seniority should be reckoned *inter se* between persons belonging to the group of ad hoc employees who were regularized. The policy clearly specifies that regularization would be granted to persons who had fulfilled a minimum of one year service as on 31 March 1977. As regards seniority, clause 5(a) specifies that the seniority, upon regularization would date back to 1 April 1977 *vis a vis* candidates appointed on a regular basis after selection through the prescribed procedure. As between ad hoc employees who were regularized, *inter se* seniority would however be based on the length of service so that a person possessing longer service would rank senior to a junior in terms of the length of service. D E

19. The judgment of the Single Judge in **Malook Singh's** case essentially dealt with two facets. The first was that persons who were recruited after following the regular procedure for selection after the date of regularization of ad hoc employees on 1 April 1977 could not rank senior to those who had been regularized prior to their date of appointment. The second aspect on which the Single Judge held in favour of the petitioners in CWP No 2780 of 1980 was that once regularization takes place, the length of ad hoc service must count for the determination of seniority. It is important to note here that the second facet of the judgment of the Single Judge was specifically kept open in the Letters F G

¹⁴ CWP No 16925 of 2003 and CWP No 4490 of 1994. H

- A Patent Appeal by the Division Bench. Therefore, clearly the judgment in **Malook Singh's** case did not conclude the issue of whether ad hoc service would count for the purpose of determining seniority.

20. The law on the issue of whether the period of ad hoc service can be counted for the purpose of determining seniority has been settled by this Court in multiple cases. In **Direct Recruits** (supra), a Constitution Bench of this Court has observed:

- C “13. When the cases were taken up for hearing before us, it was faintly suggested that the principle laid down in Patwardhan case [(1977) 3 SCC 399: 1977 SCC (L&S) 391: (1977) 3 SCR 775] was unsound and fit to be overruled, but no attempt was made to substantiate the plea. We were taken through the judgment by the learned counsel for the parties more than once and we are in complete agreement with the ratio decidendi, that the period of continuous officiation by a government servant, after his appointment by following the rules applicable for substantive appointments, has to be taken into account for determining his seniority; and seniority cannot be determined on the sole test of confirmation, for, as was pointed out, confirmation is one of the inglorious uncertainties of government service depending neither on efficiency of the incumbent nor on the availability of substantive vacancies. The principle for deciding inter se seniority has to conform to the principles of equality spelt out by Articles 14 and 16. **If an appointment is made by way of stop-gap arrangement, without considering the claims of all the eligible available persons and without following the rules of appointment, the experience on such appointment cannot be equated with the experience of a regular appointee, because of the qualitative difference in the appointment. To equate the two would be to treat two unequals as equal which would violate the equality clause.** But if the appointment is made after considering the claims of all eligible candidates and the appointee continues in the post uninterruptedly till the regularization of his service in accordance with the rules made for regular substantive appointments, there is no reason to exclude the officiating service for purpose of seniority. Same will be the position if the initial appointment itself is made in accordance with

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the rules applicable to substantive appointments as in the present case. To hold otherwise will be discriminatory and arbitrary..... A

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47. To sum up, we hold that

(A) Once an incumbent is appointed to a post according to a rule, his seniority has to counted from the date of appointment and not according to date of his confirmation. The corollary to the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account considering the seniority.” B C

(emphasis supplied)

The decision in **Direct Recruits** (supra) stands for the principle that ad hoc service cannot be counted for determining the seniority if the initial appointment has been made as a stop gap arrangement and not according to rules. The reliance placed by the Single Judge in the judgement dated 6 December 1991 on **Direct Recruits** (supra) to hold that the ad hoc service should be counted for conferring the benefit of seniority in the present case is clearly misplaced. This principle laid down in **Direct Recruits** (supra) was subsequently followed by this Court in **Keshav Chandra Joshi v. Union of India**¹⁵. Recently a two judge Bench of this Court in **Rashi Mani Mishra v. State of Uttar Pradesh**¹⁶, of which one of us (Justice DY Chandrachud) was a part, observed that the services rendered by ad hoc employees prior to their regularization cannot be counted for the purpose of seniority while interpreting the Uttar Pradesh Regularization of Ad Hoc Appointment Rules. This Court noted that under the applicable Rules, “substantive appointment” does not include ad hoc appointment and thus seniority which has to be counted from “substantive appointment” would not include ad hoc service. This Court also clarified that the judgement in **Direct Recruits** (supra) cannot be relied upon to confer the benefit of seniority based on ad hoc service since it clearly states that ad hoc appointments made as stop gap arrangements do not render the ad hoc service eligible for determining seniority. This Court speaking through Justice MR Shah made the following observations: D E F G

¹⁵ 1992 Supp (1) SCC 272

¹⁶ 2021 SCC OnLine SCC 509

- A “36. 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 regularization in the year 1989 of the ad hoc appointees
and on a fair reading of the relevant Service Rules, namely Service
B Rules, 1993 and the Seniority Rules, 1991, our conclusion would
be that the services rendered by the ad hoc appointees prior to
their regularization 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
C 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
D aside and the seniority list of 2001 counting the services rendered
by ad hoc appointees from the date of their regularization in the
year 1989 is to be restored.
37. 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
E 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.
F 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
G 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 regularized 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
H 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.”

The notification dated 3 May 1977 stated that the ad hoc appointments were made in administrative interest in anticipation of regular appointments and on account of delay that takes place in making regular appointment through the concerned agencies. In this regard, the vacancies were notified to the Employment Exchange or advertisements were issued, as the case maybe, by appointing authorities. The appointments were not made on the recommendation of the Punjab Subordinate Service Selection Board. However, subsequently a policy decision was made to regularize the ad hoc appointees since their ouster after a considerable period of service would have entailed hardship. Thus, the initial appointment was supposed to be a stop gap arrangement, besides being not in accordance with the rules, and the ad hoc service cannot be counted for the purpose of seniority.

21. Now the question that remains is that who would be bound by the judgement given in **Malook Singh** judgement which was subsequently overruled in **Gurmail Singh**. In **State of Rajasthan v. Nemi Chand Mahela**¹⁷ a two judge Bench of this Court has elucidated the difference between the doctrine of res judicata and law of precedent in the following terms:

“11...The reasoning given in paras 22 and 23 in Manmohan Sharma case [Manmohan Sharma v. State of Rajasthan, (2014) 5 SCC 782 : (2014) 2 SCC (L&S) 8] relating to the case of Danveer Singh would reflect the difference between the doctrine of res judicata and law of precedent. **Res judicata operates in personam i.e. the matter in issue between the same parties in the former litigation, while law of precedent operates in rem i.e. the law once settled is binding on all under the**

¹⁷ (2019) 14 SCC 179

A **jurisdiction of the High Court and the Supreme Court. Res
judicata binds the parties to the proceedings for the reason
that there should be an end to the litigation and therefore,
subsequent proceeding inter se parties to the litigation is
barred. Therefore, law of res judicata concerns the same
matter, while law of precedent concerns application of law
B in a similar issue. In res judicata, the correctness of the
decision is normally immaterial and it does not matter
whether the previous decision was right or wrong, unless
the erroneous determination relates to the jurisdictional
matter of that body. [Internal citations omitted]”**

C **(emphasis supplied)**

Thus, a binding decision of the court which has attained finality
would bind the parties to the proceedings *inter-se*. The private
respondents in **Malook Singh’s** case were persons who had been
recruited after 1 April 1977 *albeit* after following a regular process of
D selection. The judgment, therefore, would only bind those who are parties
to the proceedings. The judgment would by no means operate to bind
others whose interest did not coincide with the private respondents who
are impleaded in the proceedings. This is precisely the reason why the
Single Judge in the subsequent proceedings held that the seniority list
E which was prepared pursuant to the earlier judgment would not operate
to bind those persons who were not parties to the earlier proceedings
and were adversely affected. In this backdrop, there is no reason for
this Court to take a different view than that which has weighed with the
High Court in coming to the conclusion that in view of the express terms
of the policy of regularization, seniority would date with effect from the
F date of regularization.

22. Having resolved the above issue, as a matter of principle, the
Court is then left with moulding the relief. Both the appellants and the
private respondents, as well as the appellants in the companion appeals
have from time to time received their promotions during the pendency of
G these proceedings and have retired from service. Some among them
have retired nearly a decade ago. There may be some merit in the
submissions which have been urged by Mr P S Patwalia, learned senior
counsel that the judgment in CWP No 2780 of 1980 must govern those
who are parties to the proceedings and cannot be resiled from by the
State which was bound by the ultimate direction. Recasting the seniority
H

of persons who have retired from service after receiving promotions and reworking the dates of notional promotion at this stage for the entire cadre going back all the way to 1 April 1977 is a daunting exercise for the State of Punjab. This is a point which was emphasized by Ms Anusha Nagarajan in the course of her submissions. Revising the seniority at this length of time would cast an insuperable burden on the State. During the pendency of these proceedings, an exercise was directed to be conducted on a limited basis, for which several months were required. Retrieving correct data to rework seniority commencing from April 1977 would be extremely difficult, resulting in further litigation. With this backdrop, when most of the pensioners have retired from service several years ago, it would be in the interests of justice if the pensionary benefits which they are now receiving are duly protected both against recoveries and in respect of their disbursement for the future. Such a direction would be manifestly in the interest of justice and accordingly we issue an order under Article 142 of the Constitution to that effect. Insofar as the private respondents are concerned, they too like the appellants have been promoted from time to time during the pendency of these proceedings since 2011 and are in the receipt of pensionary benefits. The matter, in our view, must rest there so that the pensioners are not left in a state of uncertainty at this stage of their lives after rendering long years of service to the State in the Punjab Civil Secretariat.

23. Consequently, while we affirm the judgment of the Division Bench on the issue of the principle which has been decided above, we direct that:

- (i) The pensionary benefits which are being disbursed to the appellants shall not be disturbed. Likewise, the pensionary payments which are being disbursed to the respondents shall be paid over in accordance with law;
- (ii) No recoveries shall be made of any nature whatsoever from the appellants; and
- (iii) Insofar as the companion appeals are concerned, as recorded earlier, CWP No 16925 of 2003 and CWP No 4490 of 1994 were instituted on the basis of the observations of the Single Judge in **Malook Singh's** case. That aspect has been duly clarified both in the Letters Patent Appeal and by the Single Judge in the judgment dated 5 January

- A 2011. Hence, no further directions are required in the
 companion appeals. Both sets of appeals are disposed of.
24. The appeals are accordingly disposed of.
25. Pending applications, if any, stand disposed of.

Divya Pandey

Appeals disposed of.