

Surendra Narain Singh & Ors vs State Of Bihar & Ors on 24 April, 1998

Equivalent citations: AIR 1998 SUPREME COURT 1841, 1998 (5) SCC 246, 1998 AIR SCW 1638, 1998 LAB. I. C. 1864, 1998 (2) BLJR 975, 1998 BLJR 2 975, (1998) 2 SCR 1165 (SC), 1998 (3) SCALE 242, 1998 (4) ADSC 397, 1998 (2) UJ (SC) 128, (1998) 3 SERVLJ 129, (1998) 3 JT 489 (SC), (1998) 4 SERVLR 97, 1998 SCC (L&S) 1317, (1998) 2 LABLJ 342, (1998) 2 LAB LN 948, (1998) 4 SCT 828, (1998) 4 SUPREME 221, (1998) 3 SCALE 242

Author: S.P. Kurdukar

Bench: K. Venkataswami, S.P. Kurdukar

PETITIONER:
SURENDRA NARAIN SINGH & ORS.

Vs.

RESPONDENT:
STATE OF BIHAR & ORS

DATE OF JUDGMENT: 24/04/1998

BENCH:
K. VENKATASWAMI, S.P. KURDUKAR

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T S.P. Kurdukar. J.

A common question as regards the interpretation of Rule 20 of Bihar Judicial Service (Recruitment) Rule 20 of Bihar Judicial Service (Recruitment) Rules, 1955 arises in all these Appeals under the following circumstances:

2. Bihar Judicial Service (Recruitment) Rules, 1955 (for short 'Rules') were framed under Articles 234 of the Constitution of India for appointment of Munsifs in the Bihar Civil Service (Judicial) Branch. On coming into force of the new Criminal procedure Code w. e. f. 1. 1. 1974 the work earlier done by the Executive Magistrates stood transferred to Judicial Magistrates. Consequently the Bihar Government decided to create 152 additional temporary posts of Munsifs in the State and, therefore, on 18. 5. 1974 the Bihar Civil Service (Judicial Branch) Adhoc Recruitment Rules, 1974 (hereinafter for short '1974 Rules') were framed under Article 234 of the Constitution.

3. On April 3, 1973 the BPSC issued advertisement for 200 posts of Munsifs for the 15th examination under 1955 Rules.

The break up of 200 posts was 152 posts for general category and 48 posts were reserved for SC/ST. The BPSC conducted the written examination sometime in December, 1973. On August 26, 1974 the High Court of Patna conveyed its approval to the proposal of the BPSC to fix qualifying marks at 40% for general category candidates and 30% for SC/ST candidates. Those who were qualified in the written tests in terms of Rule 19 of 1955 Rules were called for viva-voce in August - September, 1974. At the conclusion of these formalities a common Select List based on merits was prepared. Although 48 posts were reserved for SC/ST candidates but only 15 from the SC/ST category could qualify. Thus the BPSC forwarded the list of 158 candidates to the Bihar Government for appointment as Munsifs under 1955 Rules of which 143 candidates belonged to general category and 15 to the SC/ST. Those 158 candidates came to be appointed between March 1975 and 22nd May, 1975 as Munsifs under 1955 Rules. While this process was going on, on October 14, 1974, another advertisement under 1974 Rules was issued by the BPSC for appointment of 152 Munsifs to fill in additional temporary posts of Munsifs created by the Bihar Government. After holding the written examination and viva-voce tests, merit list of 152 candidates was sent by BPSC to the Government of Bihar, which appointed them under 1974 Rules between 23. 5. 1975 and 17. 11. 1976 initially for a period of six months but the said period was extended thereafter till their confirmation on 22. 11. 1985. Between June 14, 1975 and August 4, 1975 additional nine candidates as per the merit list prepared under 1955 Rules came to be appointed taking the total number of appointments to 167 candidates comprising of 152 candidates of general category and 15 candidates of SC/ST category. Resultantly 33 posts of SC/ST candidates remained vacant for want of qualified candidates. There was acute shortage of Munsifs and since the candidates from the SC/ST category were not available in the merit list prepared under 1955 Rules, the State Government sometime in June, 1976 de-reserved these 33 posts. In view of this decision, a list of 33 candidates from the merit list prepared under 1955 Rules was forwarded to the Government and accordingly between 17th June, 1976 and 1st September, 1976 these 33 candidates came to be appointed as Munsifs, however one of them died later on. The respondent Nos. 3 to 34 are appointees falling in this category. These 32 candidates were confirmed on 9. 3. 1983 w. e. f. the dates they were appointed. These 32 candidates were given the seniority over the appellants who were recruited under 1974 Rules and were in fact appointed earlier to them. Naturally this determination of inter-se seniority between 32 candidates appointed under 1955 Rules and the appellants appointed under 1974 Rules sought to be challenged by the appellants in Writ Petitions under Article 226 of the Constitution of India in the Patna High

Court. There were two sets of writ petitions (1) the appellants (writ petitioners) who were selected and appointed under 1974 Rules and (2) the SC/ST candidates who were selected and appointed under 1955 Rules. It is a common premise that the respondent Nos. 3 to 34 were in fact appointed later in point of time than these appellants. At this stage it needs to be stated that these 32 respondents were placed above the SC/ST candidates in the merit list prepared under 1955 Rules.

4. The controversy as regards the seniority started when the Munsifs appointed from 15th Judicial Service Examination under 1955 Rules were confirmed by Notification dated 9.3. 1983 w. e. f. the different dates in the years 1977 and 78 whereas the Munsifs appointed under 1974 Rules were confirmed by Government Notification dated 22. 11. 1985 w. e. f. 1. 9. 80 which gave advantage to these 32 respondents. Similarly the Munsifs appointed in subsequent three batches i. e. 16th, 17th and 18th Judicial Service Examinations were also made senior to the Munsifs appointed under 1974 Rules. It would be appropriate at this stage to refer to the litigation started in 1985 at the behest of the appellants in CWJC Nos.6216/85 wherein a part of Rule 9 of 1974 Rules was challenged. This Rule says that on absorption of Munsifs appointed under this Rule "will not be entitled to reckon the period of his service as temporary Munsif for the purpose of his seniority". Challenge to this part of the Rule was sustained by the High Court being unjust and arbitrary and consequently a direction was issued by the Patna High Court that seniority of the appointees under 1974 Rules be re-fixed in accordance with law ignoring the struck down part of Rule 9.

5. The Munsifs appointed under 1974 Rules including some of the appellants claimed seniority from the actual date of their appointments i. e. 23.3.1975 and requested that they be placed above the present respondents Nos. 3 to 34. Against the decision rendered by the Patna High Court in CWJC No.6216/85 some of the Munsifs appointed pursuant to 15th, 16th, 17th and 18th batches apprehending that their seniority might be affected moved this Court by filing three Special Leave Petition (Civil) Nos.8699, 9354 and 11565/86 and the same were dismissed in the following terms:

"Special Leave Petitions are dismissed. We shall make it clear and in fact it was also conceded by the Counsel for the respondent Nos.

1-26 that the candidates, who were selected as a result of the 15th examination and whose appointment was delayed on account of medical examination and police verification of antecedents should be given seniority on the basis of their rank in the merit list in that examination. Any one appointed subsequent to 23. 5. 75 on account of there being no vacancy, will rank in seniority according to length of service from the dated of actual appointment".

6. The Petitioners in the Special Leave Petition No.9354/86 filed a Review Petition for clarification of this order but the same was rejected. The order reads as under:

"We have gone through the Review Petition and other connected papers. We do not find any merit in the review petition which is accordingly dismissed".

On this backdrop, pleadings of the parties to the present proceedings may now be summarised. According to the appellants they were appointed in 1975/1976 earlier in point of time to the respondents Nos.3 to 34 and, therefore, these respondents could not have been, placed above from them in the seniority list. Such a course was illegal, unconstitutional and violative of Articles 14 and 16 of the Constitution of India. The decision of the Patna High Court in CWJC No.6126/85 and the order passed by this Court while dismissing the Special Leave Petition Nos.8698, 9354 and 11565/86 must be treated conclusive and binding upon the respondents and in view thereof the respondents cannot claim the seniority over them. The appellants pleaded that the respondents projected an incorrect picture before the Supreme Court that the appointments of some of the Munsifs of 15th Judicial Examination were delayed on account of medical report and police verification. None of the respondents belonged to these categories but on the contrary they were appointed as Munsifs against the posts reserved for SC/ST. The State Government had no power to de-reserve these 33 posts without following the due procedure. These 33 posts must be deemed to have remained vacant and against these vacancies the appellants came to be appointed. Thus there existed no vacancy and, therefore, respondents Nos. 3 to 34 could not claim that they were appointed against such vacant posts. The appellants having been appointed earlier, they must be treated senior to respondents Nos.3 to 34. Length of service would be the only proper criteria for fixing the seniority and any deviation therefrom would be violative of Articles 14 and 16 of the Constitution of India.

7. The other set of appellants in Civil Appeal Nos.1385-86 of 1991 belong to SC/ST group. They were appointed as Munsifs on the basis of the merit list 15th Bihar Judicial Service Examination held under 1995 Rules. They pleaded that since they were appointed against the reserved posts earlier to respondent Nos.3 to 34 although they were placed higher in the merit list, they could not legitimately claim seniority over them. The seniority must be determined on the basis of actual date of appointment and not with retrospective effect. The order dated 14. 6. 85 of the Standing Committee of the High Court was illegal inasmuch as these respondents were made senior to them on the erroneous assumption that these 33 posts reserved for SC/ST were de- reserved but ignoring that no due procedure was followed by the Government by the Government of Bihar.

8. The High Court in its counter affidavit which came to be adopted by the State of Bihar pleaded inter alia that the appellants were appointed under 1974 Rules as ad hoc Munsifs whereas respondents Nos.3 to 34 were appointed against 200 posts under 1955 Rules. The BPSC pursuant to the advertisement issued in April, 1973 in respect of 15th Judicial Examination under 1955 Rules followed the correct procedure laid down under Rules 19 and 20 and prepared a merit list of 24% candidates and recommended 158 candidates for appointment as Munsifs. The break up was 143 from general category and 15 from SC/ST. They came to be appointed between 8. 3. 1975 to 22. 5. 1975 as per the merit list keeping in view the reservation for SC/ST. Further recommendations of eight candidates from general category were made on 14.6.1975 and 4. 7. 75 in addition to one more recommendation from general category on 24. 8. 1977. It was pleaded that there was a procedural delay in de-reserving 3 vacant posts to general category and there was no fault of theirs. These 33 vacancies of Munsifs were earmarked for 13th examination and were in existence at the time when respondents Nos. 3 to 34 were appointed. The appellants have no claim over these 33 de-reserved posts as they were selected under 1974 Rules. The decision taken by the Standing Committee of the

High Court on 10. 9. 1987 treating the respondent Nos.3 to 34 as seniors to the appellants was perfectly legal and justified and the earlier decision of the Standing Committee dated 14. 7. 86 stood rescinded. The appellants have no right to claim seniority over the respondents Nos. 3 to 34 which was determined in accordance with the recommendations made by the BPSC in terms of Rule 20 of 1955 Rules.

9. The Patna High Court after considering the rival contentions of the parties and no interpretation of Rule 20 of 1955 Rules by its Judgment and order dated May 3, 1991 dismissed all the Writ Petitions. It is against this judgment and order the appellants (writ petitioners) have filed these Appeals by Special Leave to this Court. The Main question that needs to be considered in these Appeals relates to the interpretation of rule 20 of 1955 Rules and in particular the words "as such" occurring therein.

10. Rule 19 deals with the preparation of the merit list in terms of the marks obtained by the candidates at the written examination and viva-voce test.

Rule 19 reads thus:

"The marks obtained at the viva -

voce test shall be added to the marks obtained in the written examination. The names of candidates will then be arranged by the commission in order of merit if two or more candidates obtained equal marks in the aggregate, the order shall be determined in accordance with the marks secured at the written examination of the candidates concerned be also equal then the order shall be decided of marks obtained in the optional papers. From the list of candidates so arranged the Commission shall nominate such number of candidates as may be fixed by the Governor in order of their position in the list. The nomination so made shall be submitted to the Governor by such date in each year as the Governor may fix".

11. After preparation of the list in terms of Rule 19 if the number of qualified candidates belonging to SC/ST does not contain an adequate number of such candidates, the Commission shall submit a supplementary list nominating sufficient number of "such candidates" in terms of Rule 20.

Rule 20 reads thus:

"The Commission shall, which submitting their recommendations under Rule 19, consider the claims of qualified candidate belonging to the Scheduled Castes and Scheduled Tribes. If the list of nomination submitted under Rule 19 does not contain and adequate number of candidates belonging to the Scheduled Casts and scheduled Tribes who may be appointed to the vacancies reserved for them, the Commission shall submit a supplementary list nominating a sufficient number of such candidates as in their opinion attained the required standard of qualifications and are in all respects suitable for appointment to the service".

12. At the outset, it needs to be stated that the controversy in the preset appeals is confined to the seniority list of the Munsifs in the Bihar Judicial Service. The appellants lay claim to the seniority over the respondent Nos.3 to 34 by reason of their appointments as Munsifs being earlier in point of time to these respondents. In order to determine the inter se seniority, the interpretation of Rule 20 and in particular the words "such candidates" that therein assume great importance. Respondent Nos.3 to 34 figured in the supplementary list, which was submitted by the BPSC under Rule 20 of 1955 Rules to the appointing authority. From the narration of facts set out hereinabove. It is clear that respondent Nos.3 to 34 were selected, nominated and appointed as Munsifs pursuant to the 15th Examination held under 1955 Rules. The appellants in Civil Appeal Nos. 1381-84/91 came to be recommended by the BPSC for appointment of Munsifs under 1974 Rules and in fact some were appointed on 23rd May, 1975 and others on 17th November, 1976 as Munsifs. There is also no dispute that respondent Nos.3 to 34 were appointed as Munsifs between 17.6.1976 and 1.9.1976 on the basis of the supplementary list submitted by the BPSC in terms of Rule 20. The posts on which respondent Nos.3 to 34 were appointed were reserved for SC/ST candidates in 15th Examination held under 1955 Rules but since the candidates of the two reserved categories were not available, the BPSC prepared a supplementary list in terms of Rule 20 nominating these 33 candidates from the General Category from the merit list of 15th Examination held under 1955 Rules. The appellants in Civil Appeal Nos.1385-86 of 1991 belonging to the reserved category and they came to be appointed as per the merit list of 15th Examination held under 1955 Rules. The respondent Nos.3 to 34 were higher in the merit list of 15th Examination and, therefore though appointed between 17th June, 1976 and 1st September, 1976 were given the seniority over these appellants who were appointed between March, 1975 and 22nd May, 1975. In substance the claim led by both sets of appellants in these appeals is that the date of appointment to the post of Munsif should be the criteria in finalising the seniority list and if the said principle is followed, the placement of respondent Nos.3 to 34 must be below the appellants and other similarly situated persons. The other challenge led in these appeals to the seniority list by the appellants is that in the absence of any provision under the Rules permitting the Government to convert the post reserved for SC/ST Candidates to General Category, the Government could not have converted 33 vacancies/posts of SC/St into general Category. It was also submitted that in view of the decision of Patna High Court in Rajendra Sinha vs. Bihar, 1990 (2) B.L.J.R. 13323 the controversy stood concluded in favour of the appellants inasmuch as this decision of the Patna High Court was unsuccessfully challenged in Special Leave Petition by some of contesting respondents in the Supreme Court and even Review Petition came to be dismissed. Strong reliance was placed on the orders of the Supreme Court in Special Leave Petition and Review Petition to which a reference will be made shortly.

13. Mr. Tripathi, learned Advocate appearing for the appellants in Civil Appeal Nos.1381-84/91 urged that Rule 20 is in two parts (1) the BPSC while submitting the recommendations under Rule 19 finds that the nominees of SC/ST to be appointed to the vacancies reserved for them do not contain an adequate number of candidates belonging to such reserved categories and (2) the Commission shall submit a supplementary list nominating a sufficient number of such candidates as they are in their opinion attained the required standard of qualifications and are in all respects suitable for appointment to the service. The words "such candidates" used in Rule 20 are referable to only SC/ST candidates and to none else. He, therefore, urged that the supplementary list must contain the nominees in sufficient number belonging to SC/ST inclusion of the General Category

candidates in the supplementary list to fill in the vacant posts reserved for SC/ST would be inconsistent with the object and intention of Rule 20. He urged that it was obligatory upon the BPSC to submit a supplementary list nominating sufficient number of SC/ST candidates by reviewing their performance and then from an opinion as to whether such candidates have attained the required standard of qualifications and are in all respects suitable for the appointment to the service.

14. These submission at the first flush appear to be attractive. If thus submission is to be accepted the necessary consequence would be to review the performance of SC/ST candidates who failed to secure even minimum 30% of marks fixed by the BPSC in consultation with the High Court. This would involve restructuring of the merit list. We are unable to read such procedure in Rule 20. no other provision was brought to our notice which would permit t undertake such exercise. Mr. Tripathi urged that the expression "such" used in Rule 20 is a descriptive and a relative word referring to the last antecedent. To support this submission, he drew our attention to the meaning given in the Black's Law Dictionary 6th Edition at page 1432:

"Such of that kind, having particular quality or character specified. Identical with, being the same as what has been mentioned. Alike, similar, of the like kind, 'such' represents the object as already particularised in terms which are not mentioned, and is a descriptive and relative word referring to last antecedent".

15. Mr. Tripathi relying upon the above quoted definition urged that the word "such" referred to in Rule 20 is referable only to SC/ST candidates and to no other category. He drew our attention to the judgments in Bright Bros. (P) Ltd. vs. J.K. Sayani, AIR 1976 madras 55 (at page 59) and Union Of India vs. Waziar Singh AIR 1980 Rajasthan 252 (at page 253).

16. Countering this submission, it was urged on behalf of the respondents that having regard to the scheme of Rules 19 and 20 of 1955 Rules it would be erroneous to restrict the meaning of the words "such candidates" to the SC/ST Categories. If the contention of the appellants is accepted then the BPSC will be violating the criteria as regards minimum qualifying marks prescribed by it in consultation with the High Court and this course would not be permissible. Since the candidates from SC/ST were not available fulfilling the criteria of qualifying marks, the only course opened to the BPSC was to prepare the supplementary list of the candidates from the general category from the existing merit list to fill in the 33 vacancies.

17. Upon careful consideration of the rival contentions on interpretation of Rule 20, we are of the considered View that the expression "such candidates" in Rule 20 cannot be given the restricted meaning to include only SC/ST candidates in the supplementary lest. The merit list prepared by the BPSC nominating 33 candidates therefrom unmistakably indicated that the BPSC prepared the merit list of 241 candidates who were qualified under Rule 19 of whom only 15 candidates of SC/ST could be nominated. No other qualified candidate of SC/ST was available in the said merit list. There is no provision under the Rules which enables the BPSC to recall or hold fresh written examination and viva-voce test and any exercise in that behalf would be contrary to 1955 Rules. Despite the proviso to Rule 17 no SC/ST candidate could qualify by securing the minimum marks of 30% prescribed by the BPSC in consultation of the case, the expression "such candidates" in Rule 20

would be referable to the candidates who figure in the merit list prepared by the BPSC and out of this merit list a supplementary list of candidates under Rule 20 was required to be prepared who in the opinion of the BPSC have attained the required standard of qualifications and are in all respects suitable for the appointment of service. This may even include SC/ST candidates. Any other construction would result into keeping the 33 posts reserved for SC/ST vacant and consequently there would have been shortage of Munsifs to man the Judiciary. It is not the contention of the appellants that SC/ST candidates were available in the merit list who fulfil the qualifying marks yet they were not nominated in a supplementary list. It must be remembered that judiciary being a vital organ to administer the law, any further relaxation may cause a damage to the institutional structure. For these reasons, in our considered opinion the expression "such candidates"

appearing in Rule 20 cannot be given restricted meaning. The supplementary list has to contain the names of the candidates from the merit list. Once the merit list is prepared, the name cannot be modified and the same has to remain in force until the supplementary list is prepared to fill in the advertised posts out without any compromise as regards merit. while submitting the supplementary list the BPSC shall nominate sufficient number of such candidates i. e. candidates from the merit list who in its opinion have attained the required standard of qualifications and are in all respects suitable for appointments to the service. In this view of the matter, we must hold that 33 candidates nominated by the BPSC in a supplementary list drawing from the merit list could not be assailed on any ground. Consequently the respondent Nos.3 to 34 who belong to earlier vacancies of 15th examination held under 1955 Rules would be placed senior in the seniority list to the candidates who were appointed under 1974 Rules. As regards the other set of appellants in Civil Appeal Nos.1385-86 of 1991, since their placements, they cannot claim seniority over them.

18. It was then urged that the BPSC and the State Government have no owner to convert 33 vacancies of SC/ST into General Category. These vacant posts according to the learned counsel for the appellants ought to have been carried forwarded. This submission does not appeal to us for the reason that there is no provision under 1955 Rules to carry forward the vacancies/posts reserved for SC/ST. in the absence of any such provision under 1955 Rules, it was not permissible for the BPSC or the State Government to adopt such courses. It is true that the BPSC after submitting the original list of 152 candidates from General Category, 10 from SC and 5 from ST Categories corresponded with the State Government to convert these 33 vacancies/costs of SC/ST to General Category and in that process, Government ultimately took a decision converting these 33 vacancies/posts of SC/ST to General Category in 1976 and only thereafter the BPSC submitted the supplementary list of 33 candidates from the merit list to the State Government for appointment as Munsifs. In the absence of any provision under 1955 Rules to carry forward the SC/ST vacancies/posts and in view of mandate or Rule 20, the BPSC was obliged to nominate the candidates from the merit list to the vacant posts reserved for SC/ST. The nominations and appointments of respondent Nos.3 to 34 (32) candidates was delayed till 1976 because a supplementary list was not prepared because of some misconception of law for which these respondents cannot be blamed. It is in these circumstances, we are of the considered view that the respondent Nos.3 to 34 belonged to the batch of 15th Examination held under 1955 Rules in 1974 will have to be given the placement in the seniority list

in terms of the merit list. The appellants in Civil Appeal Nos.1381- 84/91 were admittedly selected and appointed as Munsifs pursuant to the 152 posts advertised the 15th Examination was held under 1955 Rules. These appellants, therefore, cannot claim the seniority over respondent Nos.3 to 34 in the seniority list.

19. Mr. Tripathy then urged that in view of the order of this Court in Special Leave Petition, the claim of the respondent Nos.3 to 34 is barred by res judicata and/or constructive res judicata and they cannot be permitted to claim seniority over the appellants.

20. In the case of Rajendra Sinha (supra), the issue involved was that the appointees under the 1974 Rules challenged a part of the Rule 9 being arbitrary and in constitutional on the ground that their adhoc services were not reckoned for the purposes of determining their seniority. That part of the Rule 9 was struck down by the Patna High Court. It appears that some of the respondents from amongst respondent Nos. 3 to 34 got impleaded to the proceedings apprehending that their seniority might be affected and, therefore, laid this Court by filling three Special Leave Petition Nos.8698, 9354 and 11656 of 1986. This Court dismiss these Special Leave Petition in the following terms:

"Special Leave Petitions are dismissed. We shall make it clear and in fact it was also conceded by the counsel for the respondent Nos.

1 to 26 that the candidates who were selected as a result of the 15th Examination and whose appointment was delayed on account of the medical examination and police verification of antecedents should be given seniority on the basis of their rank in the merit list in that examination. Any one appointed subsequently 23-5-1975 on account of their being no vacancy, will rank in seniority according to the length of the service from the date of actual appointment".

The order of the Review Petition is as under:-

"We have gone through the Review Petition and other connected papers. We do not find any merit in the Review Petition which is accordingly dismissed".

21. Mr. Tripathy relying upon this order urged that only such of the candidates who were selected under the 15th Examination and whose appointments were delayed on account of medical examination and police verification of antecedents alone would be entitled to claim seniority on the basis of their rank in the merit list of the 15th Examination. He further urged that any appointment other than two categories referred to in the above quoted order of this Court, from the Select List of 15th Examination made subsequent to 23-5-1975 must rank in the date of actual appointment. As far as the first part of the order is concerned, there does not seem to be any difficulty in following the same. On the second part, namely, anyone appointed subsequent to 23-5-1975 on account of their being no vacancy will rank in the seniority according to the length of service from the date of actual appointment.

What is the meaning of this second part of the order ? We have already held that the respondent Nos.3 to 34 belonging to the batch of 15th Examination held under 1955 Rules and if the supplementary list nominating their names would have been sent along with the main list prepared in terms of Rule 19, then obviously there would have been no difficulty. These respondent Nos.3 to 34 would have been appointed along with the other 158 candidates between 18-3-1975 and 22-5-1975. The difficulty arose because the supplementary list nominating the respondent Nos.3 to 34 came to be forwarded after 23-7-1975. Should they suffer for no fault of theirs ? Answer is obviously in the negative.

22. Mr. Tripathi then urged that the appellants who came to be appointed on 23-5-1975 to the 152 posts of Munsifs under 1974 Rules, must be deemed to have been appointed to 33 vacant posts reserved for SC/ST candidates of 15th Examination held under 1955 Rules. If these vacancies were already filled in by appointees under 1974 Rules on 23-5-1975, the second part of the order of this Court must take effect and it must be held that there was no vacancy on/or after 23-5-1975 and consequently the respondent Nos. 3 to 34 would rank in the seniority from the dates of their actual appointments. There is a fallacy in this argument. These 33 vacant posts were meant for the candidates who appeared for 15th Examination under 1955 Rules. These 33 vacancies were never carried forward when the fresh advertisement was issued on 14th October, 1974 for appointment of 152 munsifs under 1974 Rules. These 152 posts were created first time under 1974 Rules because of amendment to the Criminal Procedure Code whereby the judicial powers of the Executive Magistrate came to be withdrawn and in order to cope with this additional work, these additional 152 posts were specially created under 1974 Rules. If this be so, the 33 vacancies of 15th Examination under 1955 Rules continued to remain vacant until they were filled in by the supplementary list nominating respondents Nos.3 to 34 by the BPSC. It is therefore, in these circumstances it must follow that these 33 vacancies of 15th Examination under 1955 Rules were continued to exist not only on 23-5-1975 but also on that date when the respondent Nos.3 to 34 came to be appointed. The appellants in Civil Appeal Nos. 1381-84 of 1991, therefore, cannot claim that they were appointed when the advertisement did not include these 33 vacancies but on the contrary 152 new posts were created under 1974 Rules for which these appellant appeared, got selected and appointed. This in our considered view is the true interpretation of the above quoted order of this Court. It must, therefore, follow that the seniority in Civil Appeal Nos. 1381-84 of 1991 cannot be said to be contrary to the above order of this Court.

23. Coming to the second limb of the argument based on the order of this Court in Special Leave Petitions that the present claim of the respondent Nos. 3 to 34 is barred by constructive res judicata, we find no merit because the dispute raised in Rajendra Sinha(supra) was confined to the challenge to the part of the Rule and writ petitioners/appellants in Civil Appeal Nos. 1381-84/91 prayed that their adhoc services be recorded for the purposes of seniority. The claim of the respondent Nos.3

to 34 being senior to the appellants was never put in issue and consequently there was never put in issue and consequently there was no determination of inter se seniority in the case of Rajendra Sinha (supra). On the contrary, the order of this Court on SLPs is quite clear to which we have already made a reference in the preceding para. We are of the view that the claim of the respondent Nos. 3 to 34 cannot be rejected in the present proceedings on the ground of res judicata or constructive res judicata.

24. Mr. Tripathi sought to rely upon the judgment of the Patna High Court in Vijay Kant vs. State of Bihar. 1986 BBCJ 677 for interpreting Rules 19 and 20 1955 Rules. We have gone through the judgment and in our opinion, it does not help the appellants.

25. For the foregoing conclusions, we are of the view that the respondent Nos. 3 to 34 who were appointed to the vacancies of 15th Examination under 1955 Rules will have to be given seniority over the appellants in Civil Appeal nos. 1381-84/91, although they came to be appointed later than 23-5-1975 but against 33 vacancies which were then existing to which these appellants had no right.

26. Coming to the Civil Appeal Nos. 1385-85/91 filled by two appellants who belonged to the reserved category, were selected in the 15th Examination under 1955 Rules and were appointed between March, 1975 and 22-5-1975. Admittedly, they were below the respondents Nos. 3 to 34 in the merit list. As stated earlier, the merit list of the selected candidates forwarded by the BPSC was required to be adhered to and there could be no change in the merit list. Consequently, these appellants can not claim seniority over respondent Nos. 3 to 34. The claim of the appellants is therefore without any merit.

27. For the foregoing conclusions, we are of the considered view that the High Court has committed no error while determining the inter-se seniority of the appellants vis-a-vis the respondent Nos. 3 to 34. There is no merit in any of these appeals. Appeals stand dismissed but, however, in the circumstances of the cases, parties are directed to bear their own costs.