Supreme Court of India
S.S. Bhola & Ors vs B.D. Sardana & Ors on 11 July, 1997
Author: Pattanaik
Bench: G.B. Pattanaik

PETITIONER:
S.S. BHOLA & ORS.

Vs.

RESPONDENT:
B.D. SARDANA & ORS.

DATE OF JUDGMENT: 11/07/1997

BENCH:
G.B. PATTANAIK

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T PATTANAIK, J.

I have gone through the erudite judgment prepared by Brother Ramaswamy. J. and having given an anxious consideration to the conclusions arrived at I am in respectful disagreement with the same. Taking into account the fact that Brother Ramaswamy, J. would be demiting his office on 13th of July, 1997, and the short time I have at my disposal I have not been able to be as elaborate as my brother. But the two broad features which have persuaded me to take a contrary view are that the implementation of the conclusions arrived at by Brother Ramaswamy, J. would lead to a situation where a direct recruit like Mr. B.D. Sardana as an Assistant Executive Engineer in the year 1977 would become senior to the promotees like Shri S.S. Bhola who were promoted as Executive Engineer way back in 1971 long before the entry of Mr. Sardana into the services. Further when the legislatures being aware of the aforesaid gross inequities and anomalous situation have come forward with a legislation by enacting an Act and giving it retrospective effect from the date the State of Haryana came into existence the Court should try to sustain the Act unless the Act is found to be repugnant to any of the constitutional provision. With the aforesaid background I have endeavoured broadly with the questions that arose for consideration.

These appeals by Special Leave as well as the Transfer Cases relate to the age old problem in almost

all services i.e. determination of inter-se seniority between the direct recruits and promotees within a cadre. These cases arise out of the directions of this Court in two cases, namely, A.N. Sehgal and others vs. Raje Ram Sheoran and others 1992 Supp. (1) Supreme Court Cases 304 and S.L. Chopra and others vs. State of Haryana and others - 1992 Supp. (1) Supreme Court Cases 391 and the seniority list drawn up by the Government of Haryana pursuant to the aforesaid direction and the intervention by the legislators in enacting an Act called the haryana Service Engineers, Class I, Public Works Department (Building and Roads Branch), Public Health Branch) and (Irrigation Branch) Act, 1995 (hereinafter referred to as "the Act"). Civil appeals nos. 422/93, 423/93 and 424/93, Writ Petition No. 582/95, and Transfer Case No, 44/96 relate to Public Health Branch and the orders passed by the State Government determining the inter se seniority in the said Branch. Out of these three Civil Appeals one is by the State of Haryana and two others are by the promotee affected officers belonging to the Public Health Branch and they are aggrieved by the judgment of the Division Bench of the Punjab and Haryana High Court in Letters Patent Appeal. Writ Petition No. 582/95 is by direct recruit B.D. Sardana under Article 32 of the Constitution challenging the validity of the Act and praving for direction to grant him seniority just below the 10 officers who initially constituted the service when the State of Haryana came into existence. Transfer Case No. 44/96 had also been filed by direct recruit in the Punjab and Haryana High Court challenging the validity of the Act which has been transferred pursuant to the orders of this Court. Civil Appeal Nos. 1448-49/93 filed by the State and Civil Appeal Nos. 1452-53/93 filed by the promotee officers belonging to the Irrigation Branch are directed against the judgment of the Division Bench of the Punjab and Haryana High Court in Letters Patent Appeal which arose out of a Writ Petition filed by one M.L. Gupta who was directly appointed as an Assistant Executive Engineer on 27.8.1971. Transfer Case No. 40/96 is the Writ Petition filed by Shri Gupta challenging the validity of the Act which stood transferred to this Court pursuant to the orders of this Court. The brief facts leading to the enactment of the Act may be stated as under:-

The separate State of Haryana came into existence on 1.11.1966. When Punjab and Haryana was one State, the recruitment and conditions of service of Engineers in the State was being regulated by Rules framed by the Governor of Punjab in exercise of powers conferred by proviso under Article 309 of the Constitution. The set of Rules dealing with the Engineers of the Public Health Branch was called "The Punjab Service Engineers, Class I, Public Works Department (Public Health Branch) Rules 1961. A similar set of Rules had also been framed by the Governor under Proviso to Article 309 of the Constitution for the Engineers belonging to the Roads and Building Branch called the Punjab Service of Engineers, Class I, Public Works Department (Roads and Buildings Branch) Rules, 1960. The provisions of these two rules are almost identical. A third set of Rules also had been framed by the Governor for Engineers belonging to the Irrigation Branch, called "The Punjab Service of Engineers, Class I. Public Works Department (Irrigation Branch) Rules. After the formation of the State of Haryana the Government of Haryana adopted all the aforesaid three Rules to deal with the service conditions of the Engineers belonging to the three branches, namely, the Public Health Branch, the Roads and Buildings Branch and the Irrigation Branch. The dispute relating to the fixation of seniority of promotees and direct recruits in the Roads and Buildings Branch came up for consideration before this Court in the case of A.N. Sehgal and others vs. Raje Ram Sheoran and others - 1992 Supp (1) Supreme Court Cases 304, and this Court after thorough analysis of different provisions of the Rules relating to the Roads and Buildings Branch interpreted

the Rules of seniority and directed the Government of Haryana to determine the cadre post regularly from time to time and to issue orders appointing substantively to the post within the quota and determine the inter se seniority between the promotees and the direct recruits in the respective quota cadre post of Executive Engineer. The provisions of the Public Health Branch Rules came up for consideration in the case of S.L. Chopra & others vs. State of Haryana and Others 1992 Supp. (1) Supreme Court Cases 391, and the dispute in that case also was the determination of inter se seniority between the direct recruits and the promotees. This Court also interpreted the relevant provisions of the Rules for determination of inter se seniority in the Public Health Branch and directed the State Government to determine the cadre strength in Haryana Service of Engineers, Class I, PWD (Public Health Branch) Rules of the posts of Executive Engineer, Superintending Engineer and Chief Engineer and consider the cases of the appellant in the said case as well as the respondents for promotion to the senior posts of Executive Engineers, Superintending Engineers and Chief Engineers respectively with the respective quota of 50 per cent and make appointment if found eligible and fit for promotion. It may be stated that the Rules relating to Irrigation Branch which is slightly different from both the aforesaid Rules, namely, the Public Health Branch and Roads and Buildings Branch had never cropped up for consideration. After the aforesaid two judgments of this Court and pursuant to the directions issued, the State Government began the exercise of fixing the cadre strength during each year commencing from 1966 and also began determination of inter se seniority of the promotees and direct recruits in the different posts within the service and also drew up the seniority list of the employees. The first set of seniority list was drawn up on 6.4.92 and being aggrieved by the said seniority list Writ Petitions were filed and the Punjab and Haryana High Court having quashed the same, Special Leave Petitions were filed in this Court. During the pendency of the Special Leave Petitions in this Court and prior to the hearing of the cases two other sets of seniority lists had been drawn up, one on 13.3.1997 and another on 19.3.97 and strenuous arguments had been advanced in support of and against the aforesaid lists drawn up by the Government. The main attack to the aforesaid list is that the earlier directions issued by this Court in Sehgal's case (supra) as well as Chopra's case (supra) have not been duly followed in drawing up the seniority list. Subsequent to the judgment of the Punjab and Haryana High Court striking down the seniority list prepared by the Government pursuant to the directions of this Court in Chopra's case (supra) the Haryana Legislators enacted the Act to regulate the recruitment and conditions of service of persons appointed in all the three branches and the validity of the said Act had been challenged in the Writ Petitions filed in Punjab and Haryana High Court. Those Writ Petitions have been transferred to this Court and have been numbered as Transfer case. Elaborate arguments were advanced by the counsel for parties challenging the validity of the aforesaid Act basically on the ground that it seeks to merely annul the judgment of this Court in Sehgal's case (supra) and in Chopra's case (supra) which is not permissible in law. It may be stated that if the Act is held to be valid then necessarily the seniority list drawn up by the State Government pursuant to the directions of this Court in Sehgal's case (supra) and Chopra's case (supra) will not bold good and a fresh seniority list has to be drawn up as the Act in question has been given retrospective effect with effect from the date of the formation of the State of Haryana in November 1966. If the Act is held to be ultra vires then also it has to be examined whether the seniority list drawn up by the State Government is in accordance with the earlier direction given by this Court in Sehgal's case (supra) and Chopra's case (supra) and if not what further directions are necessary? It is in this context it must be borne in mind that in the earlier cases only the principles

of determination of inter se seniority between the direct recruits and the promotees had been considered and adjudge bet as to how the initial allottees to the services would be considered there was no adjudication in as much as that question did not crop up for consideration.

So far as the public health branch is concerned, on the date of the formation of the State of Haryana 14 persons were brought from the erstwhile Punjab cadre of Engineers of constitute the initial cadre in the State of Haryana and since the cadre strength of the service in Haryana was only 10, four of these persons were adjusted against ex-cadre post. While bringing persons from the erstwhile Punjab cadre to Haryana the relevant Rules and the quota of direct recruit and promotees in the service had not been borne in mind and officers were brought from the erstwhile Punjab cadre depending upon the domicile of the employees. In other words, those who belonged to the Haryana State were brought over to Haryana cadre and in regulating the cadre strength the ratio between direct recruits and promotees as per Recruitment Rules then in force has not been observed. In the aforesaid premises a question which would arise for consideration and ultimate decision would be as to how these 10 officers who were brought over from the erstwhile Punjab State and constituted the initial cadre strength of service in Haryana would be dealt with? This question had not been dealt with either in Sehgal's case or in Chopra's case referred to supra. At this stage it would be appropriate to notice as to what was decided by this Court in Sehgal and Chopra. Sehgal deals with roads and building branch. In that case, one, R.R. Sheoran challenged Gradation List and the seniority assigned to Sehgal and others by filing a writ petition in Punjab and Haryana High Court. The Division Bench of the High Court came to hold that Sheoran was a member of the service from the date of his initial appointment as Assistant Executive Engineer whereas Sehgal and others who were promoted were not members of the service. This decision was challenged by Sehgal, a promotee officer and it was agreed between the parties that this Court would decide the principles on consideration of the Rules and leave the matter for the State Government to determine the inter se seniority by applying the law. The Court considered Rule 3(1), Rule 3(2), Rule 5(1)(a), Rules 6 and 7, Rule 11(1), Rule 12(3) and sub-rule (12) of Rule 2. This Court came to the conclusion that a direct recruit would always be recruited and appointed to a substantive vacancy and from the date he starts discharging the duty attached to the post he is a member of the service subject to his successfully completing the probation and declaration thereof at a later date and this appointment related back to the date of initial appointment, subject to his being discharged from service on failure to complete the probation within or extended period or termination of the service according to rules. So far as a promotee is concerned it was held that a promotee would have initial officiating promotion to a temporary vacancy or substantive vacancy and on successful completion and declaration of the probation, unless reverted to lower posts, he awaits appointment to a substantive vacancy. Only on appointment to a substantive vacancy he becomes a member of the service. It was also held that a direct recruit appointed to an ex-cadre post alone is a member of the service even while on probation and Rule 2(12)(a) applies to them and it does not apply to a promotee from Class II service. This Court also held:

> "on a conjoint reading of Rules 12(3) and 12(5) it is clear that the year of allotment of the Assistant Executive Engineer in the post of Executive Engineer, shall be the calendar year in which the order of appointment as Assistant Executive Engineer had been made. Thus his seniority as Executive Engineer, by fiction of law, would relate

back to his date of initial appointment as Assistant Executive Engineer and in juxtaposition to Class II officers' seniority as Executive Engineer is unalterable".

Since Shri Sheoran was appointed as an Assistant Executive Engineer on August 30, 1971, it was directed that his seniority as Executive Engineer shall accordingly be reckoned. While interpreting Rule 5(2) and proviso thereto it was held that the intendment appears to be that so long as the direct recruit Assistant Executive Engineer, eligible and considered fit for promotion is not available, the promotee from Class II service in excess of the quota is eligible to occupy in officiating capacity the senior posts, i.e., Executive Engineers and above. The moment direct recruits are available, they alone are entitled to occupy 50 per cent of their quota posts and the promotees shall give place to the direct recruits. On the question what is the date from which the seniority of a promotee as Executive Engineer shall be reckoned, the Court held that a promotee within quota under Rule 5(2) gets his seniority from the initial date of his promotion and the year of allotment, as contemplated in Rule 12(6) shall be the next below `the juniormost officer in the service whether officiating or confirmed as Executive Engineer before the former's appointment' counting the entire officiating period towards seniority, unless there is break in the service or from the date of later promotion. Such promotee, by necessary implication, would normally become senior to the direct recruit promoted later. Combined operation of sub-rules (3) to (5) of Rule 12 makes the direct recruit a member of the service of Executive Engineer from the date of year of allotment as an Assistant Executive Engineer. The result is that the promotee occupying the posts within 50 per cent quota of the direct recruits, acquired no right to the post and should yield to direct recruit, though promoted later to him, to the senior scale posts i.e., Executive Engineer, Superintending Engineer and Chief Engineer. The promotee has right to confirmation in the cadre post as per Rule 11(4) if a post is available to him within his quota or at a later date under Rule 5(2) read with Rule 11(4) and gets appointment under Section 8(11). His seniority would be reckoned only from the date of the availability of the post and the year of allotment, he shall be next below to his immediate senior promotee to that year or the juniormost of the previous year of allotment whether officiating or permanent occupying the post within 50 per cent quota. The officiating period of the promotee between the dates of initial promotion and the date of the availability of the cadre post would thus be rendered fortuitous and stands excluded. A direct recruit on promotion within the quota, though later to the promotee is interposed in between the periods and interjects the promotee's seniority's snaps the links in the chain of continuity and steals a march over the approved promotee probationer. Harmonious construction of Rules 2(1), 2(2), 2(7), 2(10), 2(12), 2(12)(a), 5(2)(a), 8, 9(2), 11, 12(3), 12(5) to 12(7) would yield to the above result, lest the legislative animation would be defeated and the rules would be rendered otiose and surplus. It would also adversely affect the morale and efficiency of the service. Mere officiating appointment by promotion to a cadre post outside the quota; continuous officiating therein and declaration of probation would not clothe the promotee with any right to claim seniority over the direct recruits. The necessary conclusion would, therefore, be that the direct recruits shall get his seniority with effect from the date of the year of the allotment as Assistant Executive Engineer which is not alterable. Whereas the promotee would get his seniority w.e.f. the date of the availability of the posts within 50 per cent quota of the promotees. The year of allotment is variable and the seniority shall be reckoned accordingly. Appointment to the cadre post substantively and confirmation thereof shall be made under Rule 8(11) read with Rule 11(4) of the Rules. A promotee Executive Engineer would only then become member of the service. `Appointed

substantively' within the meaning of the Rule 2(12)(a) shall be construed accordingly. We, further hold that the seniority of the promotee from Class II service as Executive Engineer shall be determined with effect from the date on which the cadre post was available to him and the seniority shall be determined accordingly." Ultimately this Court directed the Government of Haryana to determine the cadre posts, if not already done, regularly from time to time including the post created due to exigencies of service in terms of Rule 3(2) read with Appendix `A' and allot the posts in each year of allotment as contemplated under Rule 12 read with Rule 5(2)(a) and issue orders appointing substantively to the respective posts within the quota and determine the inter se seniority between the appellants therein who were promotees and Sheoran, direct recruits in the respective quota cadre posts of Executive Engineer. The Court also held that the inter se seniority of the direct recruits and promotees shall be determined in accordance with the principles laid down.

In S.L. Chopra's case, which deals with Public Health Branch, this Court held that direct recruits get seniority from the date of appointment as Assistant Executive Engineer and it is unalterable. But the promotee's seniority is variable by operation Rules 8(11) and 11(4); 2(12)(a) and 5(2) of the Rules. The State Government was accordingly directed to determine the cadre strength in the Haryana Service of Engineers, Class I PWD (Public Health Branch) under the rules, Executive Engineers, Superintending Engineers and Chief Engineers and consider the cases of the appellants therein as well as the contesting respondents B.D. Sardana, F.L. Kansal for promotion to the senior posts of Executive Engineers, Superintending Engineers and Chief Engineers respectively with the respective quota of 50 per cent and make appointment if found eligible and fit for promotion. In the said case the appellant was a promotee and the respondents were direct recruits.

The seniority list which was drawn up on 6.4.92 assumed that out of ten incumbents who originally constituted the service in the Public Health Branch five have to be treated as directed recruits fictionally under Rules 5(3) and 5 as promotees so that the disparity in the ratio will not influence the future promotion. The seniority list which was drawn up on 19.3.97 took the ten incumbents originally constituted service belonging to the quota of promotees since factually all of them were promotees under the Punjab Rules and then determined the inter se seniority of direct recruits and the promotees by application of law laid down by this Court in Sehgal's case (supra) and Chopra's case (supra).

In course of his submissions, Mr. Tulsi appearing for the State demonstrated that the Seniority List which was drawn up on 19.3.77 topsy turbid the position to such an extent that a direct recruit as Assistant Executive Engineer who was not even born on the cadre when a promotee had been appointed as the Executive Engineer, such direct recruit became senior to the promotee Executive Engineer. Such gross inequity which was resulted on account of giving effect to the Rules in force and interpreted by this Court in Sehgal and Chopra persuaded the legislature to intervene by enacting the Act and giving it retrospective effect.

Let us now examine the validity of the Act itself which was challenged by the direct recruits in filing writ petitions in the High Court of Punjab and Haryana and those writ petitions stood transferred to this Court. Mr. Sachar, the leaned counsel appearing for the writ petitioners - direct recruits contended that the Act is nothing but an usurpation of judicial power by the legislature to annual the

judgments of this Court in Sehgal and Chopra and it merely declares the earlier judgments to be invalid without anything more and as such is invalid and inoperative. Further the Act takes away the rights accrued in favour of the direct recruits pursuance to the judgments of this Court in Sehgal and Chopra and consequently the Act must be struck down. The learned counsel also urged that the mandamus issued by this Court in Sehgal and Chopra has to be complied with and the State Legislature has no power to make the mandamus ineffective by enacting an Act to override the judgment of this Court which tantamounts to a direct in-road into the sphere occupied by judiciary and consequently the Act has to be struck down. This argument of Mr. Sachar was also supported by Mr. Mahabir Singh, the learned counsel appearing for the petitioners in T.P. (Civil) No. 46 of 1997 in his written submissions and it was urged that in any view of the matter the legislatures could not have given retrospective operation to the Act itself with reference to a situation that was in existence 25 years ago and such an act of the legislature must be held to be invalid as was held by this Court in the case of STATE OF GUJARAT AND ANOTHER VS. RAMAN LAL KESHAV LAL SONI AND OTHERS. (1983) 2 S.C.C. 33. In elaborating the contention that the Act merely purports to override the judgment of this Court in Sehgal and Chopra the learned counsel referred to the Objects and Reasons of the Act as well as the affidavit filed on behalf of the State Government which would unequivocally indicate that the Act was enacted to get over the judgments of this Court in Sehgal and Chopra.

Mr. K.T.S. Tulsi, the learned senior counsel for the State of Haryana and Mr. D.D. Thakur and Dr. Rajeev Dhawan, learned senior counsel appearing for the promotee respondents on the other hand contended that the power of the State Legislature under Articles 245 and 246 of the Constitution is wide enough to make law determining the service conditions of the employees of the State and it is undisputed position of law that the legislature can make law giving it retrospective effect. According to the learned counsel the legislature having been aware of the inequities situation which have been the result of the Rules which were operating for determination of the inter se seniority between the direct recruits and the promotees as interpreted by this Court in Sehgal and Chopra, intervened in enacting the Act to remove the aforesaid inequities not by merely declaring the interpretation given by this Court to the relevant provisions of the Rules in Sehgal and Chopra to be invalid but by making substantial alterations and changes to the basis itself and as such the legislatures cannot be said to have encroached upon the field of judiciary nor the legislation can be held to be an act of usurpation of the judiciary nor the legislation can be held to be an act of usurpation of judicial power by the legislatures. According to the learned counsel the basic changes made in the Act are by altering the definition of service by addition of sub- clause (c), by providing the quota of promotees could exceed beyond 50% as per proviso to Section 5(2) and by changing the very criteria for determination of seniority namely the continuous length of service as engrafted in Section 12(2) and these changes having been made and the legislative competence not having been assailed, the Act must be held to be valid piece of legislation. It was also contended by the learned counsel that in deciding the constitutionality of the Act the Court can look into the Objects and Reasons of the Act only when there is ambiguity in the substantive provisions of the Act itself, but where there is no ambiguity in the language of the Act which declares the intention of the legislature, the Court would not be justified in looking to the Objects and Reasons for the enactment or the affidavit filed by the State Government to hold that the legislatures have usurped the judicial power and have enacted the Act merely to get over the judgments of this Court and mandamus issued by this Court in Sehgal and

Chopra. According to the learned counsel in enacting the Act the legislature has taken into account the needs of the administration and laid down the principles for determining the inter se seniority in consonance with the accepted norms of service jurisprudence namely determination of seniority on the basis of length of continuous service in the cadre which was also observed by this Court in the two earlier cases while interpreting the Rules of 1961 which was operative in determination of inter se seniority of the employees. The learned counsel further urged that no vested right of any employee has been taken away by the Act inasmuch as to obtain a particular position in the seniority list within a cadre is neither a vested right of an employee nor can be said to be fundamental right under Part - III of the Constitution. Mr. Tulsi, learned counsel appearing for the State of Haryana in this context said that by operation of the Act no employee whether a direct recruit or a promotee would be reverted to any lower post from the post to which promotion has already been made even if he is found to be junior to others in the rank of Executive Engineer and as such the contention of Mr. Sachar and Mr. Mahabir Singh that it takes away a vested right of the employees is incorrect in law. Lastly, it was contended that the legislative competence having been conceded and the Act not having been found to be contrary to any of the fundamental rights under Part - III of the Constitution the only question that requires consideration is whether it tantamounts to usurpation of judicial power by the legislature and for the contentions already advanced the Act not being one merely declaring a law laid down by this Court to be invalid, there has been no usurpation of judicial power, and therefore, the same is a valid piece of legislation determining the service conditions of the employees in the State of Haryana and this Court will not be justified in holding the Act to be invalid. A large number of authorities were cited at the Bar in support of their respective contentions which we will notice while examining the correctness of the rival submissions.

At the outset it must be borne in mind that in the case of Sehgal (supra) as well as Chopra (supra) this Court had not invalidated any provisions of the recruitment rules but merely interpreted some provisions of the Rules for determining the inter se seniority between the direct recruits and the promotees. The Act passed by the legislature, therefore, is not a validation Act but merely an Act passed by the State Legislature giving it retrospective effect from the date the State of Haryana came into existence and consequently from the date the service in question came into existence. The power of the legislature under Article 246(3) of the Constitution to make law for the State with respect to the matters enumerated in List II of the VIIth Schedule to the Constitution is wide enough to make law determining the service conditions of the employees of the State. In the case in hand there has been no challenge to the legislative competence of the State legislature to enact the legislation in question and in our view rightly, nor there has been any challenge on the ground of contravention of Part III of the Constitution. Under the constitutional scheme the power of the legislature to make law is paramount subject to the field of legislation as enumerated in the Entries in different Lists. The function of the judiciary is to interpret the law and to adjudicate the rights of the parties in accordance with law made by the legislature. When a particular Rule or the Act is interpreted by a Court of law in a specified manner and the law making authority forms the opinion that such an interpretation would adversely effect the rights of the parties and would be grossly inequitious and accordingly a new set of Rule or Law is enacted, it is very often challenged as in the present case on the ground that the legislatures have usurped the judicial power. In such a case the Court has a delicated function to examine the new set of laws enacted by the legislatures and to find out whether in fact the legislatures have exercised the legislative power by merely declaring an

earlier judicial decision to be invalid and ineffective or the legislatures have altered and changed the character of the legislation which ultimately may render the judicial decision ineffective. It cannot be disputed that the legislatures can always render a judicial decision ineffective by enacting valid law on the topic within its legislative field fundamentally altering or changing its character retrospectively as was held by this Court in the case of Indian Aluminum Company vs. The State of Kerala (1996) 7 Supreme Court Cases 637. What is really prohibited is that legislature cannot in exercise of its plenary power under Article 245 and 246 of the Constitution merely declare a decision of a Court of Law to be invalid or to be inoperative in which case it would be held to be an exercise of judicial power. Undoubtedly under the scheme of Constitution the legislature do not possess the same. Bearing in mind the aforesaid principles it is necessary to examine the legality of the Act in question. If we do not examine the substantive provisions of the Act and merely go by the object and reasons as given for the enactment of the Act as well as the counter affidavit field on behalf of the State then the Act would be possibly held to be an intrusion to the judicial sphere by the legislature. The Statements of Objects and Reasons while introducing the Bill in Haryana Vidhan Sabha is extracted herein below in extenso:-

"There was separate rules regulating service conditions and fixation of seniority in the Engineering Services in P.W.D., B & R., Public Health and PWD Irrigation Branch. These rules although different for the three branches were on identical lines with minor variations. These rules have been interpreted in the Supreme Court in the case of A.N.

Sehgal versus R.R. Sheoran and S.L.

Chopra versus B.D. Sardana.

Subsequently, the judgment has been interpreted further in the case of A.N. Sehgal versus R.R. Sheoran by an order dated 31st March, 1995 of the Supreme Court in a Contempt Petition filed by Shri R.R.

Sheoran. In the Public Health side, the seniority list prepared under the directions of the Supreme Court in S.L. Chopra versus B.D.

Sardana's case was challenged in the High Court which struck down the list., Thereafter, an appeal was filed by the State in the Supreme Court against the order of the High Court in the case of State versus B.D. Sardana. The appeal was admitted by the Supreme Court and the operative portion of the judgment of the High Court was stayed. The matter is pending for final decision in the Supreme Court, and mean while the seniority list prepared by the State is being operated by Public Health Branch.

2. Meanwhile, consequent to the directions given by the Supreme Court in the case of A.N. Sehgal vs. R.R. Sheoran and orders of the Supreme Court dated 31st March, 1995 in the Contempt Petition filed by R.R. Sheoran subsequently the seniority list had to be redrawn in the case of B & R Branch, which was totally at variance with the manner in which the seniority was drawn up in the case of Public Health Branch. Thus, the directions of the Supreme Court in the case of B & R Branch had

created a lot of Administrative problems with certain very junior officers getting undue seniority and becoming senior to the officers under whom they were previously working. The naturally resulted in sever groupism and tension between officers of the department in their day today working.

3. In order to have uniform rules for all three branches of Engineering services and to clarify the position in an unambiguous manner so as to have uniformity and clarity in interpretation, it became necessary to make certain amendments with retrospective effect. This was possible only by enacting a legislation in this regard. As the Haryana Vidhan Sabha was no in Session, it was decided to achieve the purpose through issue of an Ordinance on 13th May, 1995. The Ordinance replaced the existing rules for all the three branches of the PWD and the common enactment was to govern the service matters of Class-I service B & R Branch, Public Health Branch and Irrigation Branch."

The relevant portion of the affidavit of Shri S.N. Tanwar, Joint Secretary to the Government of Haryana filed in the Punjab and Haryana High Court indicating the ground which impelled the legislature to enact the legislation in question may be extracted hereinunder:-

"This interpretation by the Hon'ble Supreme Court has caused great hardships to the promotees. In order to remove this hardship to the promotees an Ordinance was issued on 13.5.1995 which has now become an Act No. 20 of 1995 after assent of the Governor of Haryana on 30.11.1995. If this Ordinance/Act is not issued the net result of the Order of the Hon'ble Supreme Court would be that the directly recruited Assistant Executive Engineer would be considered to be Executive Engineer from the date he was recruited as Assistant Executive Engineer. The interpretation of the judgment of the Supreme Court create such a situation that persons who were promotees and were working as Executive Engineer years before even the Assistant Executive Engineers were recruited became junior to the latter when the latter was promoted as Executive Engineer. This w as somehow considered by the Government to be very seriously hampering proper working of the department. Giving such a seniority to a person recruited as Assistant Executive Engineer have effected adversely the effective working of the department because the persons who are occupying the posts much higher to the Executive Engineer and above could became junior to Assistant Executive Engineer who is recruited even after the promotees have been discharging their duties on these higher posts. If such a situation will continue to prevail the promotees will not be able to working that capacity when they would considered to be junior to the persons who were recruited to Class I service much later than their promotions. Moreover, the Government of Haryana always considered that the Assistant Executive Engineer directly recruited would deem to be having a seniority from the date when he is actually promoted as Executive Engineer. Since the Supreme Court did not accept this interpretation it became essential for the Government of Haryana inter alia for the reasons mentioned above to issue this Act retrospectively."

If these materials are alone considered then one may be persuaded to accept the submission of Mr. Sachhar, the learned senior counsel appearing for the direct recruits - Writ Petitioners, that the Act in question was merely to declare the earlier decisions of this Court in Sehgal (supra) and in Chopra (supra) a invalid and as such is usurpation of the judicial power by the legislature. But it is a cardinal rule of interpretation that Objects and Reasons of a statue is to be look into as an extrinsic aid to find out legislative intent only when the meaning of the statute by its ordinary language is obscure

or ambiguous. But if the words used in a statue are clear and unambiguous then the statue itself declares the intention of the legislature and in such a case it would not be permissible for a Court to interpret the Statute by examining the Objects the Reasons for the Statute question.

In the case of ASWINI KUMAR GHOSH AND VS. ARABINDA BOSE AND ANOTHER, S.C.R. (1953) 1, Patanjali Sastri, J., speaking for the majority of the Court, emphatically ruled out the Objects and Reasons appended to a Bill an aid to the construction of a statute. It was observed:

> "As regards the propriety of the reference to the Statement of Objects and Reasons, it must be remembered that it seeks only to explain what reasons induced the mover to introduce the Bill in the House and what objects he sought to achieve. But those objects and reasons may or may not correspond to the objective which the majority of members had in view when they passed it into law. The Bill may have undergone radical changes during its passage through the House or Houses, and there is no guarantee that the reasons which led to its introduction and the objects thereby sought to be achieved have remained the same throughout till the Bill emerges from the House as an Act of the Legislature, for they do not form part of the Bill and are not voted upon by members. We, therefore, consider that the Statement of Objects and Reasons appended to the Bill should be ruled out as an aid to the construction of the statute."

In the case of THE CENTRAL BANK OF INDIA VS. THEIR WORKMEN. S.C.R. (1960) 200, S.K. DAS, J., reiterated the principle:

> "The Statement of Objects and Reasons is not admissible, however, for construing the section far less can it control the actual words used".

> Sinha, J., in the case of STATE OF WEST BENGAL VS.

UNION OF INDIA, S.C.R. (1) (1964) 371 held:-

> "It is well settled that the Statement of Objects and Reasons accompanying a Bill, when introduced in Parliament cannot be used to determine the true meaning and effect of the substantive provisions of the statute. They cannot be used except for the limited purpose of understanding the background and the antecedent state of affairs leading up to the legislation".

> In the case of TATA ENGINEERING AND LOCOMOTIVE CO. LTD.

VS. GRAM PANCHAYAT, PIMPRI WAGHERE, (1976) 4 SCC 177, this Court did not accept the recital in the Statement of Objects and Reasons that the amendment was made for the reason that the Panchayats could not levy tax on buildings and held that the word `houses' as originally used was comprehensive enough to include all buildings including factory buildings and that the amendment only made explicit what was implicit".

The general rule of interpretation is that the language employed is primarily the determining factor to find out the intention of the legislature. Gajendragadker, J. as he then was in the case of KANAI LAL SUR VS. PARAMNIDHI SADHUKHAN, S.C.R. 1958 360 had observed that "the first and primary rule of construction is that he intention of the legislature must be found in the words used by the legislature itself". In the case of ROBERT WIGRAM CRAWFORD VS. RICHARD SPOONER, 4 MIA 179 (PC) p. 1987 Lord Brougham had stated thus "If the legislature did intend that which it has not expressed clearly; much more if the legislature intended something very different; if the legislature intended pretty nearly the opposite of what is said, it is not for judges to invent something which they do not meet within the words of the text". Thus when the plain meaning of the words used in a statute indicate a particular state of affairs the courts are not required to get themselves busy with the "supposed intention" or with "the policy underlying the statute" or to refer the objects and reasons which was accompanied the Bill while introducing the same on the floor of the legislation. It is only when the plain meaning of the words used in the statute creates an ambiguity then it may be permissible to have the extrinsic aid of looking to the Statement of Objects and Reasons for ascertaining the true intention of the legislatures. In the aforesaid state affairs to find out whether the impugned Act is a usurpation of judicial power by the legislature it would not be permissible to look to the Statement of Objects and Reasons which accompanied the Bill while introducing the same on the floor of the legislation nor the affidavit filed by an officer of the Government would control the true and correct meaning of the words of the statute. It would, therefore, be necessary to examine the Act itself and the changes brought about by the Act and the consequences thereof in relation to the decisions of this Court in Sehgal and Chopra interpreting the Rules of seniority which were in force and which stood repealed by the Act itself.

The Preamble of the Act which is a key to the enactment clearly indicates that it is an act for consolidation of ruled relating to different Branches. It reads thus:-

> "to regulate the recruitment and conditions of service of persons appointed to the Haryana Service of Engineers, Class I, Public Works Department (Building and Roads Branch), (Public Health Branch) and (Irrigation Branch) respectively."

A comparative study of the provisions of the 1961 Rules framed by the Governor in exercise of power under the proviso to Article 309 of the Constitution and 1995 Act passed by the Haryana Legislature indicate the following changes which have been brought about by the Act:

> (a) The definition of member of service in Rule 2(12) of 1961 rules has been amended. Sub-clause (c) has been inserted in Clause 12 of Section 2 of 1995 Act by which an officer awaiting appointment to a cadre post has been made a member of service.
>
> (b) A proviso has been added to Section 5(2) of 1995 Act which expressly provides for exceeding the quota of 50% of officers promoted to the post of Executive Engineers in the event, adequate number of Assistant Executive Engineers are not available.
>
> (c) The percentage of quota has been altered from 50% to 75% in the case of Irrigation Branch by incorporating a second proviso to Section 5(2) of the Act.

> (d) The rule with regard to determination of seniority has been completely changed from the one that existed in 1961 rules. While under the 1961 rules, according to Rule 12, no member of service could enjoy the benefit of service except in accordance with the quota prescribed under Rule <??> under Clause 2 of Section 12 of the Act, length of continuous service for the post of executive engineers, has been made the sole determining factor for the fixation of seniority."

The aforesaid changes and alterations in the Act itself and giving it retrospective effect w.e.f. the date when the State of Haryana came into existence and consequently the service of engineers came into existence, rendered the earlier decisions of this Court in Sehgal and Chopra ineffective. The provisions of the Act and the definition of "service" in Section 2(12)(c), proviso to Section 5(2) and the criteria for promotion which was engrafted in Section 12(2) and making it retrospective w.e.f. 1.11.1966, when interpreted lead to the only conclusion that this Court could not have rendered the decision in Sehgal and Chopra on the face of the aforesaid provisions of the Act. It is, therefore, not a case of legislature by mere declaration without anything more overriding a judicial decision but a case of rendering a judicial decision ineffective by enacting a valid law within the legislative field of the legislature. It would be appropriate to extract a passage from the judgment of this Court in INDIAN ALUMINIUM CO. AND OTHERS VS. STATE OF KERALA AND OTHERS, (1996) 7 S.C.C. 637, to which two of us were parties (Ramaswamy. J. and Pattanaik, J.):

> "In a democracy governed by rule of law, the legislature exercises the power under Articles 245 and 246 and other companion articles read with the entries in the respective lists in the Seventh Schedule to make the law which includes power to amend the law. Courts in their concern and endeavour to preserve judicial power equally must be guarded to maintain the delicate balance devised by the Constitution between the three sovereign functionaries. In order that rule of law permeates of fulfil constitutional objectives of establishing an egalitarian social order, the respective sovereign functionaries need free play in their joints so that the march of social progress and order remains unimpeded. The smooth balance built with delicacy must always be maintained. In its anxiety to safeguard judicial power, it is unnecessary to be overzealous and conjure up incursion into the judicial preserve invalidating the valid law competently made."

It would be appropriate now to examine the different citations made at the Bar. Mr. Sachar, the learned senior counsel in support of his contention that the impugned judgment is essentially a usurpation of the judicial power by the legislature relied upon the decisions of this Court in B.S. Yadav and others vs. State of Haryana & others and Pritpal Singh and others vs. State of Punjab and Others - 1980 (Supp.) Supreme Court Cases 524, State of Gujarat & Another etc. vs. Raman Lal Keshav Lal Soni and others etc. - (1983) 2 Supreme Court Cases 33, Ex. Capt. K.C. Arora and Another vs. State of Haryana and Others. - (1984) 3 Supreme Court Cases 281, T.R. Kapur and others vs. State of Haryana and others 1986 (Supp) Supreme Court Cases 584, P.D. Aggarwal and others vs. State of U.P. and others - (1987) 3 Supreme Court Cases 622, Madan Mohan Pathak and Another etc. vs. Union of India and others - (1978) 2 Supreme Court Cases

50. In B.S. Yadav's case (supra) the question for consideration before this Court was whether Governor could frame rules relating to conditions of service of judicial officers, and if so, then whether such rule contravenes Article 235 of the Constitution? This Court held that a combined reading of Article 309 and Article 235 would lead to the conclusion that though the legislature or the Governor has the power to make Rules regulating the recruitment and the conditions of service of judicial officers of the State and thereby regulate seniority of judicial officers by laying down rules of general application, but that power cannot be exercised in a manner which will lead to interference with the control vested in the High Court by the first part of Article 235. In paragraph 76 of the judgment of Court examined the amended rule and the retrospectively of the same and held that since the Governor exercises the legislative power under the proviso to Article 309 of the Constitution, it is open to him to give retrospective operation to the rules made under that provision. But the date from which the rules are made to operate must be shown to bear, either from the face of the rules or by extrinsic evidence, reasonable nexus with the provisions contained in the rules, especially when the retrospective effect extends over a long period and no nexus is shown in the present case on behalf of the State Government. On the aforesaid reasonings the Court came to the conclusion that the retrospective effect that was given to the rules is bad in law. In the said case neither this Court examined the question of legislature in-validating a decision of a competent Court of law nor the question whether there has been any intrusion by the legislature into the judicial sphere. We fail to understand how this case is of any assistance to the petitioners in the Writ Petitions challenging the validity of the Act.

In Raman Lal's case (supra) the employees of the Panchayat Services filed a Writ Petition in Gujarat High Court claiming that they are entitled to the benefit of revision of scales of pay which were made on the basis of the recommendation of the Pay Commission. The State of Gujarat resisted those petitions on the ground that the members of the Panchayat Service were not government servants and, therefore, they are not entitled to claim the relief asked for. The High Court of Gujarat allowed the Writ Petition on coming to the conclusion that the members of the Panchayat Service belonging to the local cadre were government servants and directed the State Government to make suitable orders under Gujarat Panchayat Service (Absorption, seniority, pay and allowance) Rules, 1965 and several other directions to fix the pay scales and allowance and other conditions of service of those employees in par with the State Government servants. The State had filed appeal against the said judgment in the Supreme Court and during the pendency of the appeal an Ordinance was passed which was later on replaced by the Act. The constitutional validity of the amending Act was challenged by filing the Writ Petition by the ex-Municipal employees who were included in the local cadre. This Court came to the conclusion that the Panchayat Service constituted under Section 203 of the Gujarat Panchayat's Act is a Civil Service of the State and the members of the service are government servants. The Court, however, examined the validity of the Amending Act and came to the conclusion that before the Amending Act was passed the employees who had been allocated to the Panchayat Service had achieved the status of government servants under the provisions of the principal Act of 1961 and that status as government servant cannot be extinguished so long as the posts are not abolished and their services were not terminated in accordance what the provisions of Article 311 of the Constitution. It is in this context it was observed:-

> "The legislation is pure and simple, self-deceptive, if we may use such an expression with reference to a legislature-made law. The legislature is undoubtedly competent to legislate with retrospective effect to take away or impair any vested right acquired under existing laws but since the laws are made under a written Constitution, and to have conform to the dos and don'ts of the Constitution, neither prospective nor retrospective laws can be made so as to contravene fundamental rights. The law must satisfy the requirements of the Constitution today taking into account the accrued or acquired rights of the parties today. The law cannot say, 20 years ago the parties had no rights, therefore, the requirements of the Constitution will be satisfied if the law is dated back by 20 years. We are concerned with today's rights and not yesterday's. A legislature cannot legislate today with reference to a situation that obtained 20 years ago and ignore the march of events and the constitutional rights accrued in the course of the 20 years. That would be most arbitrary, unreasonable and a negation of history."

Thus the Amending Act was held to have offended the constitutional provisions of Article 14 and Article 311 and, therefore, was struck down.

Thus is Raman Lal, the amending Act had the effect of depriving the ex-Municipal employees of their status of membership under the State without any option to them which was considered to be unconstitutional. In the case in hand the impugned Act and its retrospectivity merely alters the seniority within a cadre and such an alteration neither contravenes any constitutional provision nor it affects any right under Part - III of the Constitution. In this view of the matter the aforesaid decision is of no assistance to the direct recruit petitioners who have assailed the legality of the Act. In K.C. ARORA's case, (1984) 3 S.C.C. 281 the amended provisions being given retrospective effect was found to have affected the accrued fundamental rights of the parties. Following the earlier judgment of this Court in STATE OF GUJARAT vs. RAMAN LAL KESHAV LAL SONI, (1983) 2 SCC 33, this Court held that the Government cannot take away the accrued rights of the petitioners and the appellants, by making amendment to the rules with retrospective effect. In the aforesaid case under the rules in force the seniority had been determined by counting the period military service. Under the amended rules by giving it retrospective effect the aforesaid benefit had been taken away. This Court, therefore, held that in view of the rules in force and the assurances given by the Government the accrued right of considering the military service towards seniority cannot be retrospectively taken away. In the case in hand no such accrued rights of the direct recruits are being taken away by the Act. On the other hand on account of gross inequitious situation the legislatures have enacted an Act in consonance with the normal service jurisprudence of determining the seniority on the basis of continuous length of service in a cadre. The aforesaid decision, therefore, cannot be said to be a decision in support of the contention that legislature have usurped the judicial power nor is it a decision in support of the contention that by the impugned Act any fundamental rights of the direct recruits have been infringed. In the case of T.R. KAPUR AND OTHER vs. STATE OF HARYANA AND OTHERS, 1986 (supp) SCC 584, when the validity of Punjab Service of Engineers, Class I, PWD (Irrigation branch) Rules, 1964 as amended by State of Haryana by notification dated June 22, 1984 came up for consideration this Court found that the said rule is violative of Section 82(6) of the Punjab Reorganisation Act, 1966, as the prior approval of the

Central Government had not been taken. On the question of power of the Governor of frame Rules under proviso to Article 309 and to give it retrospective effect the Court held that though the rules can be amended retrospectively but any benefit accrued under existing rule cannot be taken away. In other words a promotion which has already been held in accordance with the rules in force cannot be nullified by the amended rules by fixing an additional qualification for promotion. By the impugned Act the Haryana Legislatures have not purported to nullify and promotion already made under the 1961 Rules which was in force prior to being repealed by the impugned Act. Even Mr. Tulsi, appearing for the State, submitted that no promotion already made under the pre-amended rules will be altered in any manner by giving effect to the provisions of the Act. In this view of the matter, the aforesaid decision is also of no assistance to the direct recruits. In MADAN MOHAN PATHAK AND ANOTHER vs. UNION OF INDIA AND OTHERS, (1978) 2 SCC 50, a seven Judge Bench of this Court considered the question of the power of the legislature to annual a judgment of the court giving effect to rights of a party. There has ben some observations in the aforesaid case which may support the contention of Mr. Sachar inasmuch as this Court observed that the rights which had passed into those embodied in a judgment and become the basis of a mandamus from the High Court could not be taken away in an indirect fashion. The main plank of Mr. Sachar's argument is that after the judgment of this Court in Sehgal and Chopra interpreting the rules of seniority between the direct recruits and promotees, the direction of this Court to re-draw the seniority list according to the principle laid down by this Court has been taken away by the enactment of the legislature and thus there has been an in-road of the legislature into the judicial sphere. But a deeper scrutiny of the decision of this Court in Pathak will not sustain the arguments advanced by Mr. Sachar. In Pathak's case in accordance with Regulation 58 a settlement had been arrived at for payment of bonus to Class III and Class IV employees on 24th of January, 1974 and the said settlement had been approved by the Central Government. Notwithstanding the settlement when the Life Insurance Corporation did not pay bonus, the employees approached the Calcutta High Court. The High Court, therefore, issued a writ of mandamus on 21st of May, 1976 calling upon the Life Insurance Corporation to pay the bonus in accordance with the settlement in question. Against the judgment of the learned Single Judge a Letters Patent Appeal was preferred and while the said appeal was pending, the Life Insurance Corporation (Modification of Settlement) Act, 1976 came into force on 29th of May, 1976 and Section 3 thereof purported to nullify the judgment of the Calcutta High Court by the non-obstante clause in relation to provisions of Industrial Disputes Act. In other words the Calcutta High Court while issuing mandamus had held the settlement has a binding effect once approved by the Central Government and the same cannot be rescinded. But the impugned Act purported to nullify the rights of the employees working under Class III and Class IV to get annual cash bonus in terms of such settlement. It is in this context in the majority judgment of the Court delivered by Bhagwati, J., it was observed:

> "that the judgment given by the Calcutta High Court is not merely a declaratory judgment holding an impost or tax to be invalid so that t validation statute can remove the defect pointed out by the judgment amending the law with retrospective effect and validate such impost or tax. It is a judgment giving effect to the right of the petitioners to annual cash bonus under the settlement by issuing a writ of mandamus directing the LIC to pay the amount of such bonus. If by reason of retrospective alteration of the factual or legal situation, the judgment is rendered erroneous, the

> remedy may be by way of appeal or review but so long as the judgment stands, if cannot be disregarded or ignored and it must be obeyed by the LIC. Therefore, in any event, irrespective of whether the impugned Act is constitutionally valid or not, the LIC is bound to obey the writ of mandamus issued by the Calcutta High Court and pay annual cash bonus for the year April 1, 1975 to March 31, 1976 to the Class III and Class IV employees."

In making the aforesaid observation the Court did not consider the constitutionality of the Act but went by theory that the mandamus issued by the court calling upon a party to confer certain benefits to the adversary unless annulled by way of appeal or review has to be obeyed. This principle has no application to the case in hand as the nature of mandamus which has been issued by this Court in Sehgal and Chopra was merely a declaration of the principles of seniority as per 1961 Rules and the State Government was to draw up the seniority list in accordance with the said Rules. The legislature by enacting the Act and giving it retrospective effect made several vital changes both on the definition of service as well as the criteria for determining the inter se seniority between the direct recruits and promotees. The impugned Act as has been stated earlier has not taken away any accrued rights of the direct recruits, and therefore, the aforesaid observation in Pathak's case really will be of no assistance in deciding the question as to whether the Act purports to have made an in-road into the judicial sphere. The majority judgment came to hold that the impugned Act is violative of Article 31 Clause (2) as the effect of the Act was to transfer ownership debts due owing to Class III and Class IV employees in respect of annual cash bonus to the Life Insurance corporation and there has been no provision for payment of any compensation of the compulsory acquisition of these debts. It may be stated that the majority judgment did not consider the question as to whether the legislatures by enacting the Act have usurped the judicial power and have merely declared the judgment of a competent court of law to be invalid. Beg, C.J. in his concurring judgment in paragraph 32 of the judgment, however, has observed:

> "that the real object of the Act was to set aside the result of the mandamus issued by the Calcutta High Court, though, it does not mention as such, and therefore, the learned Judge held that Section 3 of the Act would be invalid for trenching upon the judicial power."

Three other learned Judges, namely; Y.V. Chandrachud, S. Murtaza Fazal Ali and P.N. Shinghal. JJ. agreed with the conclusion of Bhagwati, J. but preferred to rest their decision on the sole ground that the impugned Act violates the provisions of Article 31(2) of the Constitution and in fact they considered it unnecessary to express any opinion on the effect of the judgment of the Calcutta High Court in Writ Petition No. 371 of 1976. Thus out of seven learned Judges, six learned Judges rested their decision on the ground that the impugned Act violates Article 31(2) of the Constitution and did not consider the enactment in question to be an act of usurpation of judicial power by the legislature. The observation of Beg, C.J., in paragraph 32 does not appear to be in consonance with the several authorities of this Court on the point to be discussed hereafter. Thus the aforesaid decision cannot be pressed into service in support of Mr. Sachar's contention. In the aforesaid premises the authorities cited by Mr. Sachar in fact do not support the content in urged by the learned senior counsel and on the other hand a series of authorities of this Court to be discussed

hereafter are directly on the point unequivocally indicating that the power of the legislature to enact law and giving it retrospective effect which may factually render a decision of a competent court of law ineffective cannot be whittled down.

In I.N. SAXENA vs. THE STATE OF MADHYA PRADESH (1976) 3 SCR 237 a contention had been raised with regard to the validity of an Act to the effect that the Act has been passed to over rule a decision of this Court which the legislature has no power to do. In that case the State of Madhya Pradesh had raised age of compulsory retirement for government servants from 55 years to 58 years but the very Memorandum increasing the age of superannuation empowered the Government to retire a government servant after the servant attains the age of 55 years. Thereafter Rules under proviso to Article 309 of the Constitution were framed whereby the age of superannuation was raised to 58 years and there was no provision in the Rules empowering the government to retire a government servant after the age of 55 years. The employee concerned, however, was retired from service on completion of 55 years and the said order on being challenged the Supreme Court held that the appellant will be deemed to have continued in service inspite of the order till he attains the age of 58 years and since the appellant had already attained the age of 58 years it is not possible to direct that he should be put in service. But he will be entitled to such benefits an may accrue now to him by virtue of the success of the Writ Petition. After the judgment of the Supreme Court or Ordinance was promulgated which later on became an Act of the State of Madhya Pradesh and the said Act validated the retirement of the government servants including the appellant Saxena despite the judgment of the Court. The Act was given retrospective effect and it empowered a government to retire a government servant on his attaining the age of 55 years and the Amending Act was challenged on the ground that the legislature has usurped the judicial power. This Court had negatived the said contention and held:-

"The distinction between a "legislative" act and a "judicial"

act is well known, though in some specific instances the line which separates one category from the other may not be easily discernible. Adjudication of the rights of the parties according to law enacted by the legislature is a judicial function. In the performance of this function, the court interprets and gives effect to the intent and mandate of the legislature as embodied in the statute. On the other hand, it is for the legislature to lay down the law, prescribing norms of conduct which will govern parties and transactions and to require the court to give effect to that law.

While, in view of this distinction between legislative and judicial functions, the legislature cannot by a bare declaration, without more, directly over-rule, reverse or over-ride a judicial decision, it may, at any time in exercise of the plenary powers conferred on it by Article 245 and 246 of the Constitution render a judicial decision ineffective by enacting or changing with retrospective, curative or neutralising effect the conditions on which such decision is based. As pointed out by Ray, C.J. in Indira Nehru Gandhi v. Raj Narain, the rendering ineffective of judgments or orders of competent courts and tribunals by changing their basis by legislative enactment is a well-known pattern of all validating Acts. Such validating legislation which removes the causes for ineffectiveness or invalidity of actions or proceedings is not an encroachment on judicial power."

In the case of M/S UTKAL CONTRACTORS AND JOINERY (P) LTD. AND OTHERS vs. STATE OR ORISSA, 1987 (Supp.) Supreme Court Cases 751 a similar contention had been raised but negatived by this Court. In that case the right to collect, sale and purchase of sale seeds had been given to the petitioner and during the subsistence of the contact Orissa legislature passed an Act called Orissa Forest Produce (control of trade) Act 1981. Under the provisions of the said Act the State issued Notification on 9.12.1982 which had the effect of rescinding the contract of the petitioner. That order was challenged by filing a Writ Petition which, however, was dismissed by the Orissa High Court. On an appeal this Court reversed the decision of the Orissa High Court and held that the Act does not apply to sale seeds on government land. A declaration was made by this Court that the Act and the Notification issued under the Act do not apply to the forest produce grown in government forest and that it was, therefore, open to the government to treat the contract dated 29th May, 1987 as rescinded. The judgments of this Court is reported in (1987) 3 SCC 279. Thereafter on 29th May 1987 an Ordinance was promulgated, called the Orissa Forest Produce (Control of Trade) (Amendment and Validation) Ordinance, 1987 and it was given retrospective effect as a result of which the earlier decision of this Court became ineffective. The petitioner, therefore, challenged the validity of the same on the ground that the legislature have encroached upon the judicial power and set aside the binding judgment of this Court. Negativing the said contention this Court held:-

> "The legislature may, at any time, in exercise of the plenary power conferred on it by Articles 245 and 246 of the Constitution render a judicial decision ineffective by enacting valid law. There is no prohibition against retrospective legislation. The power of the legislature to pass a low postulates the power to pass it prospectively as well as retrospectively. That of course, is subject to the legislative competence and subject to other constitutional limitations. The rendering ineffective of judgments or orders of competent courts by changing their basis by legislative enactment is a well known pattern of all validating acts. Such validating legislation which removes the causes of ineffectiveness of invalidity of action or proceedings cannot be considered as encroachment on judicial power. The legislature, however, cannot by a bare declaration, without more, directly overrule, reverse or set aside any judicial decision."

This case is to a great extent in pari materia with the case in hand where this Court had earlier interpreted the Rules determining the inter se seniority between the direct recruits and promotees and thereafter the Haryana legislatures have enacted the Act giving it retrospective effect as a result of which earlier decisions of this Court in Sehgal (supra) and Chopra (supra) have become ineffective. In BHUBANESHWAR SINGH AND ANOTHER vs. UNION OF INDIA AND OTHERS 1994 6 SCC 77, a three Judge Bench of this Court held:

> "it is well settled that the Parliament and State Legislatures have plenary powers of legislation on the subjects within their field. They can legislate on the said subjects prospectively as well as retrospectively. If the intention of the legislature is clearly expressed that it purports to introduce the legislation or to amend the existing legislation retrospectively, then subject to the legislative competence and the exercise being not in violation of any of the provisions of the Constitution, such power cannot

be questioned."

The Court also further held:-

"that the exercise of rendering ineffective the judgments or orders of competent Courts by changing the very basis by legislation is a well known device of validating legislation and such validating legislation which removes the cause of the invalidity cannot be considered to be an encroachment on judicial power."

In rendering the aforesaid decision, this Court relied upon heavily on the Constitution Bench decision of this Court in Shri P.C. Mills Ltd. Vs. Broach Borough Municipality (1969) 2 SCC 283. The Court also relied upon the decisions of this Court in West Ramona Electric Distribution Company Ltd. Vs. State of Madras (1963) 2 SCR 747, Udai Ram Sharma and others etc. vs. Union of India and others (1968) 3 SCR 41, Krishna Chandra Gangopadhyaya and others vs. Union of India and others (1975) 2 SCC 302 and Hindustan Gum and Chemicals Ltd. Vs. State of Haryana and other (1985) 4 SCC 124. In Comorin Match Industries (P) Ltd. Vs. State of Tamil Nadu (1996) 4 SCC 281 the same question again came up for consideration. In this case an assessment order under the Central Sales Tax was set aside on the basis of the decision of Madras High Court in the case of Larsen and Tubro. In Larsen and Turbo certain provisions of the Act were declared ultra vires. In an appeal against the judgment of Madras High Court the Supreme Court held that the provisions of the Central Sales Tax Act which had been declared ultra vires by Madras High Court were validly enacted. The Central Sales Tax Act was amended and the Amending Act was given retrospective effect declaring all assessments made upto 9.1.1969 valid and binding. This was challenged on the ground that it tantamounts to over riding a decision of this Court by Legislatures. Rejecting the said contention this Court held:

"this is not a case of passing a legislation trying to nullify the interpretation of law given in the judgment of a court of law. This is a case of changing the law itself on the basis of which the judgment was pronounced holding that the assessment orders were erroneous in law."

In the case of Indian Aluminium (supra) to which two of us Brother Ramaswamy, J. and Pattanaik, J. were parties a similar contention had been raised and after considering a large number of authorities of this court and explaining the decision in the case of Madan Mohan Pathak vs. Union of India this Court negatived the contention and held that when the legislatures enacting the Act has competence over the subject matter and when the said enactment is consistent with the provisions of Part III of the Constitution and the earlier defects pointed out by the Court have been removed by the legislatures then the enactment is a valid piece of legislation and cannot be struck down by the Court on the ground that it encroaches upon the judicial sphere. A relevant passage from the aforesaid decision has already been quoted in the earlier part of the judgment.

In MEERUT DEVELOPMENT AUTHORITY AND OTHERS ETC. vs. SATBIR SINGH AND OTHERS ETC. (1996) 11 SCC 462 on a similar contention being raised this Court negatived the same and held:-

> "It is well settled that when the Supreme Court in exercise of power of judicial review, has declared a particular statute to be invalid, the legislature has no power to overrule the judgment; however, it has the power to suitably amend the law by use of appropriate phraseology removing the defects pointed out by the court and by amending the law consistent with the law declared by the Court so that the defects which were pointed out were never on statute for effective enforcement of the law."

A similar view has been expressed by this Court in the case of State of Orissa and another vs. Gopal Chandra Rath and others - (1995) 6 SCC 242. In view of the aforesaid legal position when the impugned Act is examined the conclusion is irresistible that the said Act cannot be said to be an Act of usurpation of the judicial power by the Haryana Legislature, but on the other hand it is a valid piece of legislation enacted by the State Legislature over which they had legislative competence under Entry 41 of List II of the VIIth Schedule and by giving the enactment retrospective effect the earlier judgments of this Court in Sehgal (supra) and Chopra (supra) have become ineffective. But since this does not tantamount to a mere declaration of invalidity of an earlier judgment and nor does it amount to an encroachment by the legislature into the judicial sphere the Court will not justified in holding the same to be invalid. Needless to mention that the impugned Act has neither been challenged on the ground of the lack of legislative competence nor has it been established to have contravened any provisions of Part III of the Constitution. Consequently Mr. Sachhar's contention has to be rejected and the Act has to be declared intra vires. Necessarily, therefore the seniority list drawn up on different dates in accordance with the earlier Rules of 1961 will have to be annulled and fresh seniority list has to be drawn up in accordance with the provisions of the Act since the Act has been given retrospective effect with effect from 1.11.1996. It may, however, be reiterated that any promotion already made on the basis of the seniority list drawn up in accordance with the Recruitment Rules of 1961 will not be altered in any manner.

An ancillary question which arises for consideration is whether on account of the impugned Act any accrued or vested right of any of the direct recruits to the service is being taken away? This consideration is relevant inasmuch as though the legislature may be empowered to enact law and give it retrospective effect but such law cannot take away any accrued or vested rights of the employees. Under the 1961 Rules as interpreted by this Court in the case of Sehgal and Chopra, a direct recruit gets the year of allotment as the year in which he is recruited as Assistant Executive Engineer but so far as promotees are concerned they become a member of the service only after they are appointed substantively to a cadre post and the quota of promotees can't exceed 50% of the total number of posts in the service excluding the posts of Assistant Executive Engineers to which direct recruitments are made. Inter se seniority between direct recruits and promotees is regulated by Rule 12(6) and (7). As a necessary consequence a direct recruit when promoted as Executive Engineer from the post of Assistant Executive Engineer was getting seniority over the promotee Executive Engineers and this situation has been avoided by the impugned Act by changing the definition of "service" in Rule 2(12) of the 1961 Rules, by providing the quota for promotees to exceed 50% in certain contingencies like non-availability of direct recruits to man the post of Executive Engineer and by changing the criteria for determination of inter se seniority and in place of determination of year of allotment, by providing length of continuous service to the post of Executive Engineer to be the determining factor. Necessarily, therefore, by the impugned Act a direct recruit in the rank of

Executive Engineer would come down in the gradation list than what was assigns under the Rules of 1961. The question, therefore is that, is the right of a competence under Entry 41 of List II of the VIIth Schedule and by giving the enactment retrospective effect the earlier judgments of this Court in Sehgal (supra) and Chopra (supra) have become ineffective. But since this does not tantamount to a mere declaration of invalidity of an earlier judgment and nor does it amount to an encroachment by the legislature into the judicial sphere the Court will not be justified in holding the same to be invalid. Needless to mention that the impugned Act has neither been challenged on the ground of the lack of legislative competence nor has it been established to have contravened any provisions of Part III of the Constitution. Consequently Mr. Sachhar's contention has to be rejected and the Act has to be declared intra vires. Necessarily, therefore the seniority list drawn up on different dates in accordance with the earlier Rules of 1961 will have to be annulled and fresh seniority list has to be drawn up in accordance with the provisions of the Act since the Act has been given retrospective effect with effect from 1.11.1996. It may, however, be reiterated that any promotion already made on the basis of the seniority list drawn up in accordance with Recruitment Rules of 1961 will not be altered in any manner.

An ancillary question which arises for consideration is whether on account of the impugned Act any accrued or vested right of any of the direct recruits to the service is being taken away? This consideration is relevant inasmuch as though the legislature may be empowered to enact law and give it retrospective effect but such law cannot take away any accrued or vested rights of the employees. Under the 1961 Rules as interpreted by this Court in the case of Sehgal and Chopra, a direct recruit gets the year of allotment as the year in which he is recruited as Assistant Executive Engineer but so far as promotees are concerned they become a member of the service only after they are appointed substantively to a cadre post and the quota of promotees can't exceed 50% of the total number of posts in the service excluding the posts of Assistant Executive Engineers to which direct recruitments are made. Inter se seniority between direct recruits and promotees is regulated by Rule 12(6) and (7). As a necessary consequence a direct recruit when promoted as Executive Engineer from the post of Assistant Executive Engineer was getting seniority over the promotee Executive Engineers and this situation has been avoided by the impugned Act by changing the definition of "service" in Rule 2(12) of the 1961 Rules, by providing the quota for promotees to exceed 50% in certain contingencies like non-availability of direct recruits to man the post of Executive Engineer and by changing the criteria for determination of inter se seniority and in place of determination of year of allotment, by providing length of continuous service to the post of Executive Engineer to be the determining factor. Necessarily, therefore, by the impugned Act a direct recruit in the rank of Executive Engineer would come down in the gradation list than what was assigns under the Rules of 1961. The question, therefore is that, is the right of a government servant to get a particular position in the gradation list is a vested or accrued right? The answer to this question has to be in the negative. As early as in 1962 this Court in the case of THE HIGH COURT OF CALCUTTA vs. AMAL KUMAR ROY, (1963) 1 S.C.R. 437, in the Constitution Bench considered the question whether losing some places in the seniority list amounted to reduction in rank, and came to hold:

> "In the context of Judicial Service of West Bengal, "reduction in rank" would imply that a person who is already holding the post of a Subordinate Judge has been reduced to the position of a Munsif, the rank of a Subordinate Judge being higher

> than that of a Munsif. But Subordinate Judge in the same cadre hold the same rank, though they have to be listed in order of seniority in the Civil List.
>
> Therefore, losing some places in the seniority list is not tantamount to reduction in rank. Hence, it must be held that the provisions of Article 311(2) of the Constitution are not attracted to this case."

To the said effect the judgment of this Court in the case of THE STATE OF PUNJAB vs. KISHAN DAS, (1971) 3 S.C.R. 389, wherein this Court observed:

> "an order forfeiting the past service which has earned a Government servant increments in the post or rank he holds, howsoever adverse it is to him, affecting his seniority within the rank to which he belongs or his future chances of promotion does not attract Article 311(2) of the Constitution since it is not covered by the expression reduction in rank."

Thus to have a particular position in the seniority list within a cadre can neither be said to be accrued or vested right of a Government servant and losing some places in the seniority list within the cadre does not amount to reduction in rank even though the future chances of promotion gets delayed thereby. It was urged by Mr. Sachar and Mr. Mahabir Singh appearing for the direction recruits that the effect of re-determination of the seniority in accordance with the provisions of the Act is not only the direct recruits lose a few places of seniority in the rank of Executive Engineer but their future chances of promotion are greatly jeopardise and that right having been taken away the Act must be held to be invalid. It is difficult to accept this contention since chances of promotion of Government servant are not a condition of service. In the case of STATE OF MAHARASHTRA AND ANOTHER vs. CHANDRAKANT ANANT KULKARNI AND OTHERS, (1981) 4 S.C.C. 130 this Court held:

> "Mere chances of promotion are not conditions of services and the fact that there was reduction in the chances of promotion did not tantamount to a change in the conditions of service. A right to be considered for promotion is a term of service, but mere chances of promotion are not".

To the said effect a judgment of this Court in the case of K. JAGADEESAN vs. UNION OF INDIA AND OTHERS , (1990) 2 S.C.C. 228, where in this Court held:

> "the only effect is that his chances of promotion or his right to be considered for promotion to the higher post is adversely affected. This cannot be regarded as retrospective effect being given to the amendment of the rules carried out by the impugned notification and the challenge to the said notification on that ground must fail".
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> Again in the case of UNION OF INDIA AND OTHER vs. S.L.

DUTTA AND ANOTHERS, (1991) 1 S.C.C. 505, this Court held:

> "in our opinion, what was affected by the change of policy were merely the chances of promotion of the Air Vice-Marshals in the Navigation Stream. As far as the posts of Air Marshals open to the Air Vice-
>
> Marshals in the said stream were concerned, their right or eligibility to be considered for promotion still remained and hence, there was no change in their conditions of service".

In ZOHRABI vs. ARJUNA AND OTHERS, (1980) 2 S.C.C. 203, this Court observed that "a mere right to take advantage of the provisions of an Act is not an accrued right".

The aforesaid observation would equally apply to the case in hand since the only argument advanced on behalf of the direct recruits was that the advantage which they we re receiving under the 1961 Rules to get their seniority in the rank of Executive Engineer is being taken away by the impugned Act. Since the said right is not an accrued right the legislatures were well within their power to make the law.

In the aforesaid premises, it must be held that the direct recruits did not have a vested right nor any right had accrued in their favour in the matter of getting a particular position in the seniority list of Executive Engineers under the pre-amended Rules which is said to have been taken away by the Act since such a right is neither a vested right of an employee nor can it be said to be an accrued right. Thus there is no bar for the legislature to amend the law in consequence of which the inter se position in rank of Executive Engineer might get altered. consequently, we see no invalidity in the enactment of the Haryana Service of Engineers, Class I, Public Works Department (Building and Roads Branch) (Public Health Branch) and (Irrigation Branch) Respectively Act, 1995. Though the Act in question is a valid piece of legislation but it is difficult to sustain Section 25 of the Act in toto since a plain reading of the said provision does not make out any meaning. Section 25 of the Act is quoted hereinbelow in extenso:-

> "25. The Haryana Service of Engineers Class I, Public Works Department (Buildings and Roads Branch), (Public Health Branch) and (Irrigation Branch) Respectively Ordinance, 1995 (Haryana Ordinance No. 6 of 1995), is hereby repealed. The Punjab Service of Engineers, Class-I, Public Works Department (Buildings and Roads Branch) Rules, 1960, the Punjab Service of Engineers, Class I, Public Works Department (Public Health Branch) Rules, 1961, the Punjab Service of Engineers Class I, Public Works Department (Irrigation Branch) Rules, 1964, in their application to the State of Haryana, are also hereby repealed to the extent that these rules shall continue to apply to the person who were members of the Service before 1st day of November, 1966;
>
> Provided that such repeal shall not effect--

(a) any penalty or punishment imposed as a result of disciplinary proceedings;

(b) any disciplinary action or proceedings initiated or pending under the rules so repealed;

(c) any relaxation in qualifications granted to any member of the service under the rules so repealed;

(d) the benefits accrued to the persons who have retired from service during a period commencing from the 1st day of November, 1966 and ending with the date of promulgation of the Haryana Service of Engineers, Class I, Public Works Department (Buildings and Roads Branch), (Public Health Branch) and (Irrigation Branch) respectively Ordinance, 1995.

and the Punjab Service of Engineers, Class I, Public Works Department (Building and Roads Branch) Rules, 1960, the Punjab Service of Engineers, Class I, Public Works Department (Punjab Health Branch) Rules 1961 and the Punjab Service of Engineers, Class I, Public Works Department (Irrigation Branch) Rules, 1964, shall continue to be in force as if the same had not been repealed."

The aforesaid provision repeals the previous Rules framed under proviso to Article 309 of the Constitution as well as repealed the Ordinance of 1995. It also saves the action taken in respect of matters enumerated in Clause a to d. It further purports to indicate that the earlier Rules would apply to the person who were members of the service before 1st day of November 1996 though on a plain reading of the main part of Section 25 really does not convey the aforesaid meaning. The learned counsel appearing for the State of Haryana could not indicate as to what is the true meaning of Section 25. Dr. Rajiv Dhawan, learned senior counsel, however, in course of his arguments contended that though on a plain grammatical meaning being given to Section 25 is not susceptible of representing the true intention of the Legislature and in fact it conveys absolutely no meaning bu the Court should fill up the gap by applying the principle of causes and provide the work "except" in the first part of Section 25 after the worked "to the extend" and such filling up being done the provisions of Section 25 would convey the true intention of the legislature. Though on principles Mr. Dhawan, learned senior counsel may be right in this submission that Courts can apply the principle of causes omissus and fill the gap by adding certain words when the Statute does not convey the correct meaning. But it the case in hand we do not think it appropriate to apply that principle, inasmuch as the Act itself having been given retrospective effect with effect from 1st November, 1966 the date on which the State of Haryana came into existence there is no rational to apply the pre existing rules to those employees who were members of the service before that date even after the pre-existing rule is being repealed by the Act. In this view of the matter we hold that the expression `to the extent that these rules shall continue to apply to the persons who were members of the Service before 1st day of November, 1966' is invalid and is accordingly struck down. Remaining part of Section 25 as well as the proviso to the said Section will, however, remain operative.

Though in view of our conclusion that the Act is intro virus, the inter se seniority of the concerned officers are required to be re-determined in accordance with the Act itself, subject however, to the restrictions that promotions already made will not be annulled but since the judgment of the Punjab and Haryana High Court in favour of the direct recruit B.D. Sardana was rendered by interpreting the Recruitment Rules of 1961 and relying upon the earlier decisions of this Court in Sehgal and Chopra (supra) it would be appropriate for us to also deal with the said judgments since an appeal has been carried to this Court by the promotees in Civil Appeal No. 422 of 1993. After the judgment of this Court in Sehgal (supra) and Chopra (supra) when the State Government drew up the seniority list in the rank of Executive Engineers on 6.4.92 Shri Sardana who had been appointed directly as an Assistant Executive Engineer on 7.12.1977 challenged the said seniority list claiming therein that initially 10 officers having formed the cadre when haryana became a separate State and all of them being promotees and as such the quota of promotees was in excess of the 50% which is the permissible quota under the Recruitment Rules, he should be given the position just after 10 persons who constituted the initial cadre irrespective of the fact that he was recruited on 7.12.1977. The further contention before the High Court was that the State Government was not entitled to re-determine the cadre strength each year after the judgment of this Court in Sehgal (supra) and Chopra (supra). The High Court by the impugned judgment appears to have been persuaded to accept both these contentions and the promotees, therefore, have assailed the legality of the same. Mr. D.D. Thakur, learned senior counsel appearing for these promotees as well as Dr. Rajiv Dhawan, learned senior counsel appearing for some of the promotees urged that the High Court was in error to hold that the State Government was not entitled to re-determine the cadre strength each year retrospectively subsequent to the judgment of this Court in Sehgal (supra) and Chopra (supra). It was contended that 10 persons who constituted the initial cadre when the State of Haryana was formed and all those 10 persons having been allocated to Haryana from the erstwhile State of Punjab on the basis of their domicile it would be reasonable to construe and apply the Recruitment Rules which was in force in Punjab and which had been adopted by Haryana by fictionally holding the recruitment of 10 persons to be the initial recruitment to the cadre and by fictionally holding that the Recruitment Rules which was adopted by Haryana was in fact came into existence so far as the State of Haryana is concerned on 1.11.1966. According to the learned counsel unless such a construction is given the position will be very anomalous and direct recruits like Shri Sardana will be senior to promotees who had been promoted even in the year 1968 or 1969 even though Sardana was recruited as an Assistant Executive Engineer only on 7.12.1977. According to the learned counsel the Rule in question cannot be construed in such a manner to bring about gross inequities and, therefore, a reasonable construction should be made. Mr. Sachhar, learned senior counsel and Mr. Mahabir Singh, learned counsel appearing for the direct recruits and Mr. Sardana, appearing in person, on the other hand, submitted that it was not necessary for the State Government to redetermine the cadre strength every year retrospectively since the judgment of this Court in Sehgal (supra) and Chopra (supra) merely authorises the Government to determine the cadre strength if it has not already been done. According to the learned counsel such re-determination of cadre strength every year has been mala fidely done by increasing the strength of the cadre so as to accommodate the promotees within 50% quota available for them under the Recruitment Rules and, therefore, such redetermination must be struck down and the High Court has rightly struck down the same. It was also contended on their behalf that the initial cadre having been constituted on 1.11.1966 and the entire cadre being filled up by application of the provisions of the Recruitment

Rules, 5 of them were beyond the permissible limit of 50% quota in the service. Consequently until the cadre strength is so maintained so as to bring down the ratio of 50% so far as the promotees are concerned any direct recruit may during the intervening period must be held to be senior to such promotees and therefore, the High Court was fully justified in holding that Mr. Sardana should rank below 10 persons who constituted the initial cadre irrespective of the hardship that may be caused to the promotees. According to the learned counsel while interpreting a particular rule the Court is not required to look into the hardship which the interpretation may cause so long as the rules are unambiguous. It was ultimately contended that the High Court has rightly struck down the seniority list that has been drawnup on 6.4.1992 as well as the determination of cadre strength made by the state government and, further the list that was drawn up on 15.4.1997, while the appeals were pending in this Court is the correct gradation list reflecting he inter se seniority of the direct recruits and promotees correctly in accordance with the interpretation of the rules given by this Court in the case of Sehgal (supra) and Chopra (supra). The rival submissions require a careful examination of the relevant provisions of Rule of 1961 as well as in the light of the earlier decisions of this Court in Sehgal (supra) and Chopra (supra). Before examining the same it may be stated that the Division Bench of the Punjab and Haryana High Court in the impugned judgment came to the conclusion that the State Government was not entitled to re- determine the cadre strength retrospectively and by such action of the State Government by increasing the cadre strength promotees have been given undue advantage and direct recruits like B.D. Sardana have lost their vested right and, therefore, such an order cannot be sustained in law. The High Court also further came to the conclusion that on carving of State of Haryana when the initial cadre was fixed at 10 and 10 persons brought over from erstwhile State of Punjab the Recruitment Rules of 1961 must be made applicable to them and consequently the quota of promotees cannot exceed 50%. In this view of the matter since all the 10 persons who constituted the cadre in 1966 were promotees and thus far beyond the permissible quota of 50% the first direct recruit in the cadre Shri Sardana must be given 11th position in the seniority list and he would be senior to all those promotees who were promoted after the initial formation of the cadre irrespective of their date of promotion as an Executive Engineer and irrespective of the date on which Mr. Sardana was appointed directly as an Assistant Executive Engineer on 7.12.1977. As has been stated earlier, this Court in A.N. Sehgal's case (supra) on considering the recruitment rules decided the principles for determination of inter se seniority between the direct recruits and the promotees and left the matter for the State Government to re-determine the same by applying the law as declared by this Court. While interpreting the provisions of the Rules the Court came to hold that a promotee within quota under Rule 5 (2) gets his seniority form the initial date of his promotion and the year of allotment, as contemplated in Rule 12(6) shall be the next below `the juniormost officer in the service whether officiating or confirmed as Executive Engineer before the former's appointment' counting the entire officiating period towards seniority, unless there is break in the service or from the date of later promotion. Such promotee, by necessary implication, would normally become senior to the direct recruit promoted later. Combined operation of sub-rules (3) to (5) of Rule 12 makes the direct recruit a member of the service of Executive Engineer form the date of year of allotment as an Assistant Executive Engineer. The Court further held that necessary conclusion would, therefore, be that the direct recruits shall get seniority with effect from the date of the year of the allotment as Assistant Executive Engineer which is not alterable. Whereas the promotee would get his seniority with effect from the date of the availability of the posts within 50% quota of the promotees and the year of

allotment is variable and the seniority shall be reckoned accordingly. In concluding paragraph of the judgment the Court directed the Government of Haryana to determine the cadre posts regularly form time to time including the post created due to exigencies of service in terms of Rule 3(2) read with Appendix `A' and allot the posts in each year of allotment as contemplated under Rule 12 read with Rule 5(2)(a) and issue orders appointing substantively to the respective posts within the quota and determine the inter se seniority between the promotees and direct recruits in the respective quota cadre posts of Executive Engineers etc. in Sehgal (supra) the Court was dealing with the service of Engineers Class I PWD (Roads and Building) Branch. Similarly in Chopra (supra) the Court dealt with the service of Engineers (Public Health Branch), the rules of Public Health Branch being the same as the rules in Roads and Building Branch. In concluding paragraph of the said judgment though an affidavit had been filed by one of the appellants that the State Government has determined the cadre strength but this Court declined to go into the question and left it open to the Government of determine the seniority after giving opportunity to all parties in the light of the law laid down in the case. In Chopra's case (supra) in paragraph 10 of the judgment this Court had observed that under Rule 3(2) read with Appendix `A' the State Government is enjoined to determine the cadre post from time to time and during the first 5 years on first day of January every year and later from time to time and divide the posts as per the ratio f the available cadre post to the promotees and the direct recruits and shall make appointment in a substantive capacity.

In course of argument Mr. K.T.S Tulsi, learned senior counsel appearing for the State of Haryana had pointed out that the State Government had taken steps for making direct recruitment to the cadre but as no competent people were available, per force the cadre was to be managed by filling up the posts by promotees and it was done in the public interest. The learned counsel had urged that there is no justification in the arguments advanced by the counsel for direct recruits that the promotees were in fact given undue favour. We are, however, really not concerned with this submission while interpreting the relevant provisions of the Rules and the Rules having been framed under the proviso to Article 309 of the Constitution the same has to be scrupulously followed. But at the outset on going through the two earlier decisions of this Court in Sehgal (supra) and Chopra (supra) there should be no hesitation to come to the conclusion that the High Court was in error to hold that the State Government was not entitled to re-determine the cadre strength retrospectively every year and such re- determination is invalid and inoperative. On the other hand since the cadre strength had not been determined regularly though it was enjoined upon the State Government to do so this Court had called upon the State Government to re- determine the cadre strength and thereafter determine the inter se seniority of the direct recruits and promotees in terms of Rule 12 of Recruitment Rules bearing in mind the law laid down by this Court interpreting the different provisions of the Rules. The said conclusion of the High Court, therefore, must be quashed.

Now coming to the question as to how the initial appointees to the service are to be dealt with since in the two earlier cases this Court had never considered this question, the question assumes a greater significance.

The Rules framed under the proviso to Article 309 of the Constitution came into force w.e.f. the <??> June, 1961, the date on which the Rule was published in the official Gazet. Under sub-rule (1) of Rule 3, it is stipulated that the service shall comprise of such number of posts of Assistant

Executive Engineers, Executive Engineers, Superintending Engineers and Chief Engineers as may be specified by Government from time to time. Under sub-rule (2) of Rule 3 the strength of the service for the first five years after the common cement of these rules shall be determined each year on the 1st day of January or soon thereafter as may be practicable according to the provisions of Appendix A and the strength so determined shall remain in force till it is revised. Sub-rule (2) of Rule 5 stipulates that the recruitment to he service shall be so regulated that the number of posts filled up by promotion form Class II Service shall not exceed fifty per cent of the number of posts in the Service, excluding the posts of Assistant Executive Engineers. Proviso to sub-rule (2) provides that till adequate number of Assistant Executive Engineers eligible and considered fit for promotion are not available the actual percentage of officers promoted form Class II service may be larger than 50%. Sub-rule (3) of Rule 5 speaks of a fictional situation namely in the service as constituted immediately after the commencement of these rules, it shall be assumed that the number of persons recruited by promotion form Class II Service shall be 50% of the senior posts in the Service and future recruitment shall be based on this assumption. Sub-rules (1) and (2) of Rule 3 and sub-rules (2) and (3) of Rule 5 of 1961 Rules may be extracted herein below in extenso :

> "3. Strength of Service : (1) the Service shall comprise of such number of posts of Assistant Executive Engineers, Executive Engineers and Chief Engineers as may be specified by Government from time to time.
>
> (2) Without prejudice to the generality of the provisions of sub-rule (1) the strength of the Service for the first five years after the commencement of these rules shall be determined each year on the 1st day of January or as soon thereafter as may be practicable according to the provisions of Appendix A. The strength so determined shall remain in force till it is revised.
>
> 5. Recruitment to service : (2) Recruitment to the service shall be so regulated that the number of posts filled by promotion from Class II Service shall not exceed fifty per cent of the number of posts in the Service, excluding the posts of Assistant Executive Engineers;
>
> Provided that till such time as an adequate number of Assistant Executive Engineers, who ar eligible and considered fit for promotion, are available, the actual percentage of Officers promoted from Class II Service may be larger than fifty per cent. (3) In the Service as constituted immediately after the commencement of these rules, it shall be assumed that the number of recruited by promotion from Class II Service is fifty per cent of the senior posts in the Service and further recruitment shall be based on this assumption."

From a combined reading of the aforesaid provisions the following situation emerges :-

(a) That the Rules came into force w.e.f. 9th of June, 1961 but the service existed even prior to the said date;

(b) On constitution of the service immediately after the commencement of the Rules by operation of a fictions it was assumed that number of persons recruited by promotion from Class II service is 50% of the senior post in the service. This fictional situation emerges in view of sub-rule (3) of Rule 5, so that, the future recruitment to the service can be regulated appropriately under sub-rule (2) of Rule 5; and

(c) A duty was enjoined upon the State Government to determine the strength of the service each year on the 1st day of January or soon thereafter as may be practicable for the first five years after the commencement of the Rules and the strength thus determined year to year would remain in force till it is revised.

When recruitments were being made without determination of the cadre strength and statutory rules came into force for the first time on 9th of June, 1961 the Rules cast a duty on the Government to determine the cadre strength each year and thereafter make recruitment in terms of Rule 5 regulating the manner of filling up the post in the service subject to the provisions contained in sub-rule (2) of Rule

5. Rule 12 is rules for determination of seniority. This Rule has already been interpreted by this Court in Sehgal and Chopra indicating the manner in which the seniority bas to be determined inter se between the promotees and direct recruits. When State of Haryana came into existence and persons were serving in the erstwhile State of Punjab were drafted into State of Haryana and constituted the initial cadre strength of the service in the State of Haryana and the Government of Haryana adopted the Punjab Rules of 1961 for determining the service conditions of the employees it would be reasonable to hold that so far as the State of Haryana is concerned the Recruitment Rules came into force on 1.11.1966 and since the persons who constituted the service came from erstwhile State of Punjab depending upon their domicile it would be further reasonable to construe that they constituted the service soon after the rules were adopted by the State of Haryana and thereafter Rule 5(3) should be attracted in respect of those 10 officers who constituted the service and by such application, by a fiction 50% should be treated to be promotees and on so treating them further recruitment to the service was required to be regulated in accordance with sub-rule (2) of Rule 5 and it is then the inter se seniority has to be determined under Rule 12. In other words, out of 10 persons who were brought over form the erstwhile State of Punjab and constituted the service in the State of Haryana 5 will be assumed to have been recruited by promotion from Class II service by application of sub-rule (2) of Rule 5 even if factually all the 10 were promotees while they were recruited under the Punjab Rules. Since the initial cadre strength was only 10 in the year 1966 and since under Rule 5(2) the promotees cannot exceed 50% of the total number of posts in the services, the Recruitment Rules by fiction held 50% of the persons constituted the service immediately after the commencement of the Rules to be promotees. Thereafter the State Government was duty bound to determine the cadre strength every year in the first five years as per sub-rule (2) of Rule 3 and in fact this direction had been given in the earlier judgments in the case of Sehgal and Chopra and after such determination of the cadre strength if in a particular year it is found that the promotees have usurped the quota of direct recruit then such promote cannot be held to be senior to the direct recruit notwithstanding their earlier recruitment to the service. If these principles are borne in mind then the gradation list which had been prepared by the State Government on 6.4.1992 was possibly

the correct gradation list and the High Court was in error to quash the said gradation list on a conclusion that the earlier direction of this Court in Sehgal and Chopra has not been followed. Obviously, the High Court misunderstood the directions of this Court in the case Sehgal and Chopra. We are however, not going o examine the said gradation list that was prepared on 6.4.1992 or any other gradation list which had been prepared subsequently during the pendency of these appeals, since in our view the Act having been come into force and the Act have been given retrospective effect the seniority has to be drawn up afresh in accordance with the provisions of the Act.

So far as the rules dealing with Irrigation Branch is concerned, the said rules namely Punjab Service of Engineers (Irrigation Branch) Class I Service Rules, 1964 has not been considered earlier by this Court at any point of time. One Shri M.L. Gupta was appointed to the post of Assistant Executive Engineer as a direct recruit on 27.8.1971, pursuant to he result of a competitive examination held by the Haryana Public Service Commission in December, 1970. Said Shri Gupta was promoted to the post of Executive Engineer on 17.9.1976. He made representation to the State Government to fix up his seniority in accordance with the service rules but as the said representation was not disposed of for more than three years he approached the High Court of Punjab and Haryana by filing C.W.P. NO. 4335 of 1984. That petition was disposed of by the High Court on the undertaking given by the State that the seniority will be fixed up soon. The said undertaking not having been complied with, said Shri Gupta approached the High Court in January 1986 by filling Contempt Petition. In September, 1986 the State Government fixed the inter se seniority of said Shri Gupta and other members of the service ad Gupta was shown at serial no. 72. Two promotees had been shown at serial no. 74 and 75. Those two promotees filed a writ petition challenging the fixation of inter se seniority between the direct recruits and promotees and High Court of Punjab and Haryana by its judgment passed in May 1987 quashed the order dated 29.9.1986 whereunder the seniority of the direct recruits and promotees has been fixed and called upon the State Government to pass a speaking order assigning position in the gradation list. The State Government issued a fresh notification on 24.7.1987 giving detailed reasons re- affirming the earlier seniority which had been notified on 29.9.1986. Prior to the aforesaid notification of the State Government Shri Gupta had filed a writ petition in the Punjab and Haryana High Court which had been registered as CWP No. 6012 of 1986 claiming his seniority at No. 22 instead of 72 which had been given to him under the notification dated 29.9.1986. The promotees also filed a writ petition challenging the Government order dated 24.7.1987 which was registered as CWP No. 5780 of 1987. Both the writ petitions, one filed by direct recruit - Shri Gupta (CWP No. 6012 of 1986) and the other filed by the promotees (CWP No. 5780 of 1987) were disposed of by the learned Single Judge by judgments dated 24th January, 1992 and 4th March, 1992 respectively, whereunder the learned Single Judge accepted the stand of the promotees and Shri Gupta was placed below one Shri OP Ganged. Said Shri Gupta filed two appeals to the Division Bench against the judgment of the learned Single Judge, which was registered as Letters Patent Appeal nos, 367 and 411 of 1992. The aforesaid Letter Patent Appeals were allowed by judgment dated 27th August, 1992. This judgment of the Division Bench of Punjab and Haryana High Court was challenged by the State of Haryana in the Supreme Court which has been registered as CA Nos. 1448-49 of 1993. This Court granted leave and stayed the operation of the judgment in the matter of fixation of seniority. The promotees also challenged the said judgment of the Division Bench in this Court which has been registered as CA Nos. 1452-1453 of 1993. During the pendency of these appeals in this Court, a Ordinance was promulgated on 13.5.1985 as

Ordinance No. 6 of 1995 and the said Ordinance was replaced by the impugned Act of 20 of 1995 by the Haryana Legislature. The validity of the Act was challenged by said Shri Gupta and pursuance to the order of this Court the said writ petition having been transferred to this Court has been registered as T.C. No. 40 of 1996. So far as the validity of the Act is concerned, the question of any usurpation of judicial power by the legislature does not arise in relation to Irrigation Branch inasmuch as the Recruitment Rules of 1964 framed by the Governor of Punjab in exercise of power under proviso to Article 309 of the Constitution which has been adapted by the State of Haryana on and from the date Haryana was made separate State had not been considered by this court nor any direction has been issued by this court. The legislative competence of the State legislature to enact the Act had also not ben assailed and in our view rightly since the State legislature have the powers under Entry 41 of List - II of the Seventh Schedule to frame law governing the conditions of service of the employees of the State Government. That apart Article 309 itself stipulates that the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State subject to the provisions of the Constitution. Proviso to Article 309 confers power on the President in connection with the affairs of the Union and on the Governor in connection with the affairs of the State to make rules regulating the recruitment and the conditions of service until provision in that behalf is made by or under an Act of the appropriate Legislature under Article 309 main part. In this view of the matter, the legislative competence of the State legislature to enact the legislation in question is beyond doubt. The only question which therefore, arises for consideration and which is contended in assailing the validity of the Act is that under the Act the direct recruits would lose several positions in the gradation list and thereby their accrued and vested rights would get jeopardised and their future chances of promotion also would be seriously hampered and such violation tantamounts violation of rights under Part - III of the Constitution. For the reasons already given while dealing with the aforesaid contention in connection with the Public Health Branch and the Road Building Branch the contention rased in the Transfer Case cannot be sustained and, therefore, the Transfer Case would stand dismissed. The Act in question dealing with the service conditions of he engineers belonging to the Irrigation Branch must be held to be a valid piece of legislation passed by the competent legislature and by giving it retrospective effect no constitutional provision has ben violated nor any right of the employee under Part - III of the constitution has been infringed requiring interference by this Court.

So far as the four appeals are concerned, one at the instance of the State and other at the instance of the promotee engineer, even though it is not necessary to examine those appeals since the inter se seniority of the members of the service will have to be re-drawn up in accordance with the provisions of the Act, yet arguments having been advanced by the learned advocates appearing for the parties, we may briefly deal with the same. The Division Bench of the Punjab and Haryana High Court in disposing of the Letters Patent Appeal in favour of the direct recruit has come to the conclusion that the interpretation given by the Supreme Court to the Recruitment Rules dealing with the Public Health Branch and the Roads and Building Branch in Sehgal and Chopra would equally apply to the Irrigation Branch. In coming to the aforesaid conclusion the learned Judges of the High Court have failed to appreciate the difference between the rules dealing with the Irrigation Branch and the two sets of rules dealing with the Public Health Branch and the Roads and Building Branch. So far as the rules dealing with the Irrigation Branch is concerned, Rule 2(12)(c) makes a

promotee officer on probation or having successfully completed his probation awaiting appointment to a cadre post to be a member of the service which was not the position in the Public Health Branch as well as in the Roads and Building Branch. Then again under rule 5(2) the percentage of promotees was required to be so regulated so as not to exceed 75% of the number of posts in the service for the first 10 years form the date of the commencement of the Rules and thereafter it shall not exceed 50% of the number of posts in the service excluding the posts of Assistant Executive Engineer. Proviso to the aforesaid rules also entitles the Government to grant permission beyond 75% during the first 10 years of the commencement of the rules and beyond 50% thereafter in case sufficient number of direct recruits - Assistant Executive Engineers are not available and considered fit for promotion. Rule 12 which deals with the determination of inter se seniority is also somewhat different than the similar rule for the Public Health Branch and the Roads and Building Branch which had been considered by this Court in the cases of Sehgal and Chopra. In this view of the matter, the Division Bench of the Punjab and Haryana High Court was not justified in disposing of the appeal relying upon the earlier decisions of this Court in A.N. Sehgal's case. The learned Judges have not focussed their attention to the difference in the rules meant for the Irrigation Branch and the Rules meant for the Public Health Branch and Roads and Building Branch. The impugned judgment, therefore, passed by the Division Bench of the Punjab and Haryana High Court is erroneous and cannot be sustained. But as has been stated earlier it is not necessary to delve into the question in a more detailed manner since the Act having come into force and the Act being made effective retrospectively w.e.f 1.11.1966, the date on which the State of Haryana was formed, the inter se seniority has to be determined in accordance with the provisions of the Act. Consequently, the judgment of the Punjab and Haryana High Court in LPA Nos. 367 and 411 of 1992 is set aside an the State of Haryana is directed to re-determine the inter se seniority of the members of the service belonging to the Irrigation Branch in accordance with the provisions of the Act. Civil Appeal Nos. 1448-1449 of 1993, 1452-1453 of 1993 and T.C. No. 40 of 1996 are disposed of accordingly.

In the ultimate result, therefore, we hold Haryana Act 20 of 1995 is intra virus except part of Section 25 which has been held to be ultra virus. The Act having been given retrospective effect with effect from 1.11.1966 the inter se seniority of direct recruits and promotees in each of the services, namely, the PWD Branch, the Public Health Branch and the Irrigation Branch will have to be re-drawn up in accordance with the provisions of the Act. The seniority lists already drawn up subsequent to the judgment of this court in the case of Sehgal and Chopra and as well as during the pendency of these appeals in this court are of no consequence in view of the Act coming into force. It is, however, made clear that any promotion already given on the basis of seniority determined by the Government under the pre-existing rules will not be annulled notwithstanding any change in the seniority to be determined under the Act. The impugned judgments of Punjab and Haryana High Court are set aside. The State Government is directed to re-consider the question of seniority of the employees of the three Branches under the Act within a period of six months form today and to give consequential promotion on that basis soon thereafter.

All the appeals and the transfer cases are disposed of accordingly.