

# **Ramakant Tiwari vs State Of U.P.Through Prin.Secy.Minor ... on 17 May, 2018**

**Equivalent citations: AIRONLINE 2018 ALL 5086**

**Bench: Devendra Kumar Arora, Rajesh Singh Chauhan**

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

RESERVED

Case :- SERVICE BENCH No. - 4734 of 2018

Petitioner :- Ramakant Tiwari

Respondent :- State Of U.P.Through Prin.Secy.Minor Irrigation Lko.& Anr.

Counsel for Petitioner :- Santosh Kumar Yadav ''Warsi''

Counsel for Respondent :- C.S.C., Archana Singh, Ziauddin Khan

Hon'ble Dr. Devendra Kumar Arora, J.

Hon'ble Rajesh Singh Chauhan, J.

(1) Heard Mr. V.K. Singh, learned Senior Advocate assisted by Mr. Santosh Kumar Yadav ''Warsi'', learned Counsel for the petitioner and Mr. Pankaj Nath, learned Additional Chief Standing Counsel for the State.

(2) The petitioner, who is said to be working as Executive Engineer in the Department of Minor Irrigation, Government of U.P., has approached this Court under Article 226 of the Constitution of India, with the following reliefs :

- i. Issue a writ, order or direction in the nature of the certiorari quashing the impugned orders/ instructions/directions dated 01.02.2018 and 02.02.2018 issued by the opposite party No.1, after a summoning from its custodian.

ii. Issue a writ, order or direction in the nature of the certiorari quashing the consequential impugned order/instruction/direction vide letter dated 07.02.2018 issued by the opposite party no.2 pursuant to the direction issued by the opposite party no.1 vide letters dated 01.02.2018 & 02.02.2018.

iii. Issue a writ, order or direction in the nature of mandamus thereby commanding and directing the respondents/opposite parties not to take any coercive/punitive measure against the petitioner till the conclusion of the process started for consideration of promotion of the petitioner on the post of Superintendent Engineer Minor Irrigation Department in compliance of judgment and order dated 21.09.2017 passed by this Hon'ble Court in the writ petition No. 22956 (S/B) of 2017 filed by the petitioner.

iv. Issue any other writ order or direction in favour of the petitioner which this Hon'ble High Court may deem fit just and proper under the circumstances of this case in favour of the petitioner.

v. Allow the instant writ petition with appropriate costs in the interests of justice.

(3) Shorn off unnecessary details the facts of the case are as under :

According to the petitioner, he is posted as Executive Engineer in the department of Minor Irrigation Government of U.P. since 23.07.2012. In the department of Minor Irrigation, State Government had sanctioned 12 posts of Superintending Engineers and further due to retirement of five Superintending Engineers, namely, Shri Shiv Sharan Singh, Sri Rajendra, Sri Y.N. Dubey, Sri Firtu Ram and Sri Rajeev Kumar Mehtani, for the Selection Year 2016-2017 (01.07.2016 to 30.06.2017), five vacancies of Superintending Engineer have fallen vacant. These posts are to be filled up by way of promotions amongst the suitable and eligible Executive Engineers by the Departmental Promotion Committee.

(4) In order to fill up the aforesaid five vacancies of the Superintending Engineers, a proposal for promotion against five vacancies of Superintending Engineers amongst the suitable eligible Executive Engineers was sent by the Chief Engineer, Minor Irrigation Department to the State Government in the month of July, 2016. In furtherance of the aforesaid proposal sent by the office of Chief Engineer, the Minor Irrigation Department had sought relaxation in qualifying service under U.P. Government Servants Relaxation in Qualifying Service for Promotion Rules, 2006 (In short, referred to as "Relaxation Rules"). In the month of September, 2016, the Karmik Department of the Government of U.P. has given its approval for the same, resultantly 15 incumbents have been found eligible for promotion on the post of Superintending Engineers. The petitioner was placed at serial No. 10 in the approved list.

(5) According to the petitioner, despite having necessary approval from the Karmik Department, the State Government did not proceed to convene the Departmental Promotion Committee and belatedly, after receiving approval from the Karmik Department, the State Government, vide letter No. 2305 dated 10.1.2017, has sought modified/amended proposal from the office of Chief Engineer, Minor Irrigation Department.

(6) It has been stated that pursuant to the letter dated 10.2.2017, the office of Chief Engineer has made available the amended proposal to the Government but no further proceeding towards convening the Departmental Promotion Committee took place despite representation and reminders being sent by the petitioner, compelling the petitioner to file writ petition No. 22956 (S/S) of 2017, which was disposed of finally on 21.9.2017. The Court while disposing of the writ petition, issued a direction to the Principal Secretary, Minor Irrigation Department to complete the process in its letter and spirit for promotion to the post of Superintending Engineer expeditiously if there is no other legal impediment.

(7) According to the petitioner, as the opposite parties have not taken any positive action on the issue in furtherance of the judgment and order dated 21.9.2017, the petitioner preferred a Contempt Petition No. 2253 (C) of 2017 before this Court, wherein notice was issued. In response thereof, the Principal Secretary has filed an application dated 4.12.2017 duly supported with an affidavit for grant of time with the averments that prior to passing the judgment and order dated 21.9.2017 by this Court in writ petition No. 22956 (SS) of 2017, the Selection Committee for promotion has been constituted vide letter dated 27.4.2017 and in pursuance thereto, the Selection Committee met on 11.7.2017 and considered the matter accordingly. However, due to some discrepancies, the Selection Committee could not take the final decision. It was also mentioned in the reply by the Principal Secretary that the meeting of the Selection Committee for considering the promotion of the petitioner along with other eligible candidates was scheduled to be held in the month of December, 2017 and in the said meeting, the matter of the petitioner would be considered for promotion on the post of Superintending Engineer.

(8) It has been stated that on 19.12.2017, due to non-compliance of the order of the writ Court, the Principal Secretary was summoned in the contempt proceeding on 17.1.2018. It is said that on account of the issuance of summoning order, the Principal Secretary became annoyed and she convened the Departmental Selection Committee under her Chairmanship on 20.12.2017 in a hurried manner and having grudge with the petitioner on account of her personal appearance required by this Court, deferred the Departmental Promotion Committee, taking various artificial excuses. Thereafter, a short counter affidavit dated 21.12.2017 was filed before the Contempt Court. In reply, the petitioner has filed short rejoinder affidavit in the contempt proceeding, stating therein that the alleged DPC convened on 20.12.2017 has no meaning in the eyes of law.

(9) Counsel for the petitioner has submitted that the plea of the opposite parties that some exercise is to be undertaken pursuant to pending writ petition No. 18925 of 2016 and representation of Mr. G.C. Gupta & others is misleading as up to the Apex Court, the seniority list in question has been affirmed and on previous occasion, the similar representations made by the same persons were rejected by the then Principal Secretary, taking into account the entire fact as well as judgment passed by the Apex Court, vide Office Memorandum dated 31.3.2016. Thus, the seniority list of 2005 is still intact. Moreover, on the basis of same seniority list, twelve promotions on the post of Superintending Engineer have been made in the selection year 2015-16 and now when the petitioner's right to promotion is to be considered, irrelevant plea is being raised by the opposite parties.

(10) Elaborating his submission, learned Counsel for the petitioner has submitted that the post of Superintending Engineer in the Minor Irrigation Department is field level post and 12 Superintending engineer are posted at regional levels, as such, another artificial impediment by the saying that opinion is awaited, whether the post of Superintending Engineers is a post of Additional Head of the department, is also not tenable more particularly, when till date promotions were made by the Committee headed by the Principal Secretary.

(11) Counsel for the petitioner has submitted that on 17.1.2018, the Contempt Judge has fixed the date of personal appearance of Principal Secretary but she did not appear before the Contempt Judge on the date fixed. Thereafter, upon hearing the argument advanced from both the sides, further date was fixed for 2.2.2018 calling upon the opposite party therein to appear in person. He submits that resulting upon the order dated 17.1.2018, the Principal Secretary became annoyed and vide office memorandum dated 18.1.2018, has taken a decision in pending representations of the petitioner against adverse entries. His submission is that the Office Memorandum dated 18.1.2018 is against the spirit of the judgment and against the provisions of the Uttar Pradesh Government Servants (Disposal of Representation against adverse annual confidential reports and allied matters) Rule, 1995 (hereinafter referred to as "Rule, 1995") as Section 5 of Rule, 1995 provides that where a representation against an adverse report has not been disposed of in accordance with Rule 4, such report shall not be treated adverse for the purpose of promotions, crossing efficiency bar and other matter of the Government Servant concerned and further Section 7 of Rule, 1995 provides that where an officer legally competent to dispose of a representation against an adverse report under these Rules willfully fails to do so within the period prescribed therefor shall be guilty of misconduct and be punishable in accordance with the punishment rules applicable to him.

(12) Counsel for the petitioner has further submitted that the Principal Secretary, vide Office Memorandum dated 18.1.2018, has formed a four member committee for disposing of numerous pending representation against the final seniority list of 2005,

which has already been scrutinized up to the Apex Court and based upon the said seniority list, promotions have been made in the department and so many writ petitions have been filed before this Court and no positive order has yet been passed.

(13) Learned Counsel for the petitioner has next submitted that on 2.2.2018, the Principal Secretary appeared in the contempt proceeding and has filed a short counter affidavit, stating therein that Departmental Promotion Committee for promotion of Executive Engineer to the post of Superintending Engineer is to be constituted under the Chairmanship of Chief Secretary and the process for promotion is to be conducted by Personal Department. It has also been stated in the short counter affidavit that few representations have been received against the seniority list in question for re-determination of the seniority in view of the judgment of the Apex Court rendered in Secretary, Minor Irrigation Department & R.E.S. Vs. Narendra Kumar Tripathi : (2015) 2 UPLBEC 1161, to which advice was received from the Law Department and Personnel Department and representation of such officer were advised to be decided in consultation with the Finance and Personnel Department. The Contempt Judge, on considering the submissions of the parties has passed the following order :

"A detailed supplementary affidavit along with application for framing of charge has also been moved today by the petitioner and a copy thereof has been provided to the learned Advocate General, who prays for and is allowed a week's time to go through the affidavit and file reply thereof.

In pursuance of the order dated 17.1.2018, Principal Secretary, Minor Irrigation, Smt. Monika S. Garg is present in person and affidavit has also been filed by her today and the same is also taken on record.

In paragraph 6 of the affidavit, it has been stated that for promotion for the post of Superintending Engineer with grade pay of Rs. 8700/-, the matter was referred to the Personnel Department (Karmik Vibhag). They clarified on 25.1.2018 that in view of the Formation of Uttar Pradesh Departmental Promotions Committee (for posts outside the service commission sector) Rules, 1992 and as specified in the G.O. dated 5.5.1997, the DPC for promotion of Executive Engineer to the post of Superintending Engineers is to be constituted under the Chairmanship of the Chief Secretary and the process for promotion is to be conducted by Personnel Department. It has also been stated in the affidavit filed today that few representations regarding seniority list are also pending and those representations need to be decided before finalizing the seniority list and only after finalizing the seniority list, the DPC would be held.

It has been submitted that on behalf of the petitioner that seniority list was initially published on 30.5.2008. It has not been disputed that the Hon'ble Supreme Court has passed a direction for redetermination of the seniority and in the light of this direction the seniority list is to be redetermined after disposing of the representation

by the concerned officers.

The learned counsel for the petitioner has objected that the aforesaid order referred by the learned Advocate General is not in respect of the seniority list published on 30.5.2008.

List this petition after four weeks to enable the opposite party to file reply of the affidavit filed today.

In the meantime, the opposite party may process seniority list and make endeavour to finally decide the same, so that DPC for promotion can be held.

The Principal Secretary who is present today need not appear again unless she is specifically called for."

(14) According to the petitioner, since some observations transcribed in the aforesaid order dated 2.2.2018 are contrary to the record as well as against the dictum of the writ Court's order, Full Bench Decision and the judgment of the Apex Court regarding status of seniority list dated 30.8.2005, the petitioner has filed an application for modification of order dated 2.2.2018 before the Contempt Court, which is pending disposal. In the meantime, the Principal Secretary, in view of the the aforesaid order dated 2.2.2018 as well as with the intention to delay the Departmental Promotion Committee, has initiated process for re-determination of final seniority list dated 30.8.2005, under the garb of the judgment and order dated 7.4.2015 passed in Civil Appeal No. 3348 of 2015 filed by one Engineer, namely, Narendra Kumar Tripathi, an employee working with the Rural Engineering Services Department in the State of Uttar Pradesh.

(15) Counsel for the petitioner has pointed out that Narendra Tripathi of Rural Engineering Services Department had filed writ petition No. 9940 of 2001 with the grievance that in the seniority list published on 4.1.1995 (in the rural department), his name was placed at serial No. 274 showing his service w.e.f. 14.12.1989 and in doing so he was not given the benefit of past service, while such benefit was given to other persons who were similarly placed in the Rural Engineering Services Department. On considering these grievances, this Court has held that the writ petitioner was entitled to benefit of past services in view of the law laid down by the Apex Court in Direct Recruit Class-II Engineer Officers Association Vs. State of Maharashtra : 1990 (2) SCC 715. Aggrieved by the aforesaid findings/observations, the State Government had approached the Apex Court. During the pendency of the aforesaid matter, Narendra Kumar Tripathi had filed another writ petition, bearing No. 11542 of 2004, seeking therein to comply with the earlier order of the High Court. The matter was thereafter referred to a Larger Bench along with other writ petition filed on the same subject. The Larger Bench of this Court heard the matter and decided the same vide judgment and order dated 10.12.2014 passed in Farhat Hussain Vs. State of U.P. and others : (2005) 1 UPLBEC 475 (All) (FB). Against the judgment and order dated 10.12.2014, the Rural Engineering Services Department has approached the Apex Court. His submission is that under the circumstances and scheme of the working of the Rules prevalent in the Rural Engineering Department and benefit given to other similarly situated persons, the Apex court was pleased to allow the claim of Narendra Kumar

Tripathi (supra) and in compliance thereof, the Rural Engineering Department has complied with the judgment passed by the Apex Court and placed by him at the appropriate place in the seniority list of the Engineers employed in the Rural Engineer Department.

(16) Learned Counsel for the petitioner has vehemently asserted that the Rural Engineering Department of which Narendra Kumar Tripathi was the employee have its own service rules, namely, U.P. Rural Engineering (Group-A) Service Rules, 1991 and U.P. Rural Engineer (Group-B) Service Rules, 1993 and have separate seniority list having no concern with the rules governing the service condition in the Minor Irrigation Department, which has its own separate rules and seniority list for its member of service. On the other hand, Irrigation Department created in the year 1966 to take care of Irrigation facilities to smaller farmer at lower level and has its own service rules, namely, Uttar Pradesh Engineer Service (Minor Irrigation Department) Rules, 1991.

(17) As regard the finalization of seniority list, it has been pointed out by the Counsel for the petitioner that previously existing final seniority list dated 19.3.1996 of the feeding cadre of Assistant Engineer was withdrawn on 26.11.2001 and the final seniority list dated 19.3.1996 was reviewed and later on was cancelled. Thereafter, a fresh tentative seniority list was published on 11.7.2005 inviting objections from all the persons concerned and 67 objections were said to have been received. Subsequently, on considering and dealing with such huge number of objections, the final seniority list was duly published on 30.8.2005. The final seniority list dated 30.8.2005 of the feeding cadre of Assistant Engineer was challenged before this Court in writ petition No. 18657 of 1999 : Devendra Nath Shukla and another Vs. State of U.P. and a Division Bench of this Court, vide order dated 29.9.2005, dismissed the writ petition by observing that the seniority once settled cannot be disturbed. He has also submitted that final seniority list was also challenged by one Arun Kumar Srivastava, who was serving as Executive Engineer in the Minor Irrigation Department, in Writ Petition No. 11134 of 2006 : Arun Kumar Srivastava Vs. State of U.P. and others, which was also dismissed by a Division Bench of this Court vide judgment and order dated 26.5.2011 on the ground that the question raised in the writ petition are covered by the earlier judgment in Devendra Nath Shukla's case and no new ground was raised. Thereafter, a writ petition, bearing Writ-A No. 7114 of 2013 was filed, challenging the validity of promotion orders passed based on the aforesaid final seniority list dated 30.8.2005, which too was dismissed by the Division Bench of this Court vide judgment and order dated 10.1.2014, holding therein that seniority once settled cannot be the subject matter of challenge after lapse of time. Therefore, there was no justifiable occasion for the authorities to unsettle the seniority after such a long lapse of time.

(18) Counsel for the petitioner has also invited our attention towards the judgment and order dated 10.1.2014, which was further challenged before the Apex Court in SLP No. 21463 of 2014, which too was dismissed vide order dated 12.9.2014. Thereafter, no other dispute regarding final seniority list dated 30.8.2005 of the Minor Irrigation has reached to the Apex Court and on the basis of the same seniority list, eight DPCs have been convened and twelve promotions on the post of Superintending Engineer have been made in the selection year 2015-16 by the Committee presided over by the Principal Secretary, Minor Irrigation Department and when petitioner's right to consideration for promotion emerged, so many irrelevant points are being raised by the opposite parties just to harm the petitioner and has caused serious prejudice to him.

(19) Learned Counsel for the petitioner has further urged that vide impugned orders/instructions/directions, objections have been invited from all concerned for re-determining the final seniority list dated 30.8.2005, treating the same as provisional/tentative seniority list, which is void ab initio as it is a well settled legal proposition that once the seniority has been fixed and it remains in existence for a long reasonable period, it cannot be challenged and changed on any ground whatsoever.

(20) Per contra, learned Additional Chief Standing Counsel has submitted that vide order dated 2.2.2018 passed in Contempt Case No. 2253 of 2017 : Rama Kant Tiwari Vs. Monika S. Garg, the Contempt Judge, directed the opposite party to process seniority list and make effort to finally decide the same so that DPC for promotion can be held. In compliance of the order dated 2.2.2018, representations have been invited vide letter No. 369 dated 1.2.2018 for re-determination of the existing Seniority List dated 30.8.2005.

(21) Learned Additional Chief Standing Counsel has further submitted that the process for re-determination of seniority is on account of Apex Court's judgment dated 7.4.2015 in case No. 3348 of 2015 : Narendra Kumar Tripathi Vs. Secretary, Minor Irrigation & Rural Engineering Service Department. Accordingly, the process has been initiated in a time bound manner to finalize the seniority list as early as possible following which the proposal will be sent to Karmik Vibhag for convening the Departmental Promotion Committee.

(22) Learned Additional Chief Standing Counsel has further submitted that 12 promotions were made in the year 2015 by a Committee under the Chairmanship of Principal Secretary, Minor Irrigation & Ground Water. However, at the time of considering promotions in 2017, it was brought to the notice of the Committee on 20.12.2017 that the Departmental Promotion Committee needs to be constituted as per rules of Personnel Department. The matter was referred to the Personnel Department and they have clarified on 25.1.2018 that in view of the formation of "Uttar Pradesh Departmental Promotions Committee (for Posts Outside the Service Commission) Rules, 1992 and as specified in their Government Order dated 5.5.1997, the Departmental Promotion Committee for promotion of Executive Engineer to the post of Superintending Engineers is to be constituted under the chairmanship of the Chief Secretary and the process for promotion is to be conducted by Personnel Department. In these backgrounds, the process for promotion to the post of Superintending Engineer against vacancies for the selection year 2016-17 and 2017-18 has now been initiated as per Rules.

(23) Learned Additional Chief Standing Counsel has further submitted that a Committee has been constituted vide order No. 440/62-2-2018 dated 6.2.2018 under the Chairmanship of the Special Secretary, Minor Irrigation & Groundwater Department and consists of a representative each of Karmik Vibhag, Finance Department and Minor Irrigation Department. His submission is that the petitioner's seniority has also been challenged. Sri D.K. Singh and Sri Alok Sinha, Executive Engineers have represented against the petitioner, questioning his promotion order dated 28.5.1998 and informing that Sri Intezar Ali (on whose basis the petitioner was promoted) was never regularly promoted, therefore, the matter is being considered and inquired with assistance of the Committee.



(24) Counsel for the State has submitted that the petitioner had joined as Junior Engineer on 23.6.1988 with the qualification 'Intermediate' and produced the Certificate of AMIE (Mechanical) in 1992. He claimed promotion to the post of Assistant Engineer against 8% quota reserved for Junior Engineer possessing degree in BE/AMIE on the plea that his junior Sri Intezar Ali had been given promotion. The petitioner approached the Tribunal whereby the Tribunal directed to consider him for promotion, subject to the availability of vacancy.

(25) Refuting the allegations of the respondent, the petitioner in his rejoinder reply has clarified that Minor Irrigation Department was established in the year 1964 and a Government Order dated 8.10.1964 was duly issued for this purpose. Rural Engineering Department was created in the year 1972 and vide Government Order dated 1.7.1972, posts were created/sanctioned in the department. Therefore, it cannot be said that both the aforesaid departments were same prior to year 2011 rather three departments, namely, Minor Irrigation, Rural Engineer Services and Ground Water Resource were/are functioning in the composite form having their own separate cadre, separate set of service rules and seniority etc. under administrative control of the State Government.

(26) Learned Counsel for the petitioner has submitted that insofar as representations preferred by Sri R.K. Mahtani (since retired) and Sri G.C. Gupta (since retired) are concerned, they had already moved their representation against tentative seniority list in the year 2005 and thereafter in the year 2016, after the judgment of Narendra Tripathi's case (supra) whereupon office memorandum dated 31.3.2018 was passed wherein also it has been reiterated that Rural Engineering Services and Minor Irrigation are two separate departments having separate service rules and seniority. The said persons have not moved before any Court of law, challenging the aforesaid office memorandum dated 31.3.2016 or the seniority list dated 30.8.2005.

(27) We have examined the submissions of the learned Counsel for the parties and gone through the record.

(28) It is not in dispute that the order dated 1.2.2018, letter dated 2.2.2018 and consequential order dated 7.2.2018, impugned in the present writ petition, have been issued/passed in the garb of the judgment and order dated 7.4.2015 passed in a Civil Appeal No. 3348 of 2015 filed by one Narendra Kumar Tripathi (supra), an employee of Rural Engineering Services, whereby re-determination of the final seniority list dated 20.8.2005 has been processed.

(29) While attacking the impugned orders, the stand of the petitioner in the present writ petition is that Rural Engineer Department, to which the said Narendra Kumar Tripathi was the employee, have its own service rules, namely, U.P. Rural Engineering (Group A) Service Rules, 1991 and U.P. Rural Engineering (Group B) Service Rules, 1993 and have separate seniority list, therefore, employee working in Rural Engineering Department have no concern/relation with the Rules governing the service condition in the Minor Irrigation department, which is a separate entity and has its own separate service rules, namely, Uttar Pradesh Engineer Services (Minor Irrigation Department) Rules, 1991 and seniority of its member of the service. Furthermore, final seniority list of the feeding cadre of Assistant Engineers dated 30.8.2005 was affirmed by the Apex Court. In these circumstances,, it is wrong to say that judgment rendered in Narendra Kumar Tripathi's case

is judgment in rem. Therefore, process of re-determination of the final seniority list by means of the impugned orders/instructions/letters are not only contumacious but also contrary to the service jurisprudence. According to the petitioner, the judgment of Narendra Kumar Tripathi's case has no relevance with the department of Minor Irrigation because the Narendra Kumar Tripathi was employed with rural engineering department and had contested his claim individually upto the Apex Court and has succeeded, resulting in re-determination of seniority.

(30) Before proceeding further, it would be relevant to aptly deal with the question as to whether the judgment of the Apex Court rendered in Narendra Kumar Tripathi's case is a judgment in rem or judgment in personam in the given facts and circumstances of the case ?

(31) Judgment in rem is an adjudication pronounced upon the status of a person or a thing by a competent court to the world generally; Judgment of a court in exercise of probate, matrimonial or insolvency jurisdiction confirming or taking away any legal character are judgments in rem; and it is binding on all persons, whether they are parties to those proceedings or not. Judgments in Personam are all the ordinary judgments not affecting the status of any subject matter, any person or anything; the judgments of the civil court are the judgments in Personam; and it is binding on the parties to the suit only. The distinction between a judgment 'in rem' and a judgment 'in personam', is that, in the former, the point adjudicated upon is conclusive against all the world as to status, whereas in the case of a judgment in personam, the point is only conclusive between the parties and their privies.

(32) Undoubtedly, Narendra Kumar Tripathi's case, the dispute relates to determination of the seniority of Assistant Engineers working in the Rural Engineering Department. The seniority of such Assistant Engineers which had been determined on 14th December 2001 did not count the ad hoc services rendered by Assistant Engineers prior to their regularization on 14th December 1989. It was subjected to challenge in several writ petitions earlier filed from 2001. The Assistant Engineers of the Rural Engineering Department pleaded that ad hoc services should be added to their length of service for determining their seniority. Ultimately, the Supreme Court decided the matters relating to Narendra Kumar Tripathi on 7th April 2015 and directed for re-determination of the seniority by adding the service rendered on ad hoc basis for the purpose of seniority. It was for this reason that the seniority was then re-determined on 22 March 2016. It may be clarified that in Narendra Kumar Tripathi's case the Apex Court has not issued any general direction for revisiting the seniority of employees in the light of observations made in the said judgment. In these circumstances, the judgment given by the Apex Court in the above case relates to the Rural Engineering Services Department.

(33) In Narendra Kumar Tripathi's case [supra] the Apex Court noted that the question involved in both the matters was as to whether the writ petitioner was entitled to count the service rendered as an Assistant Engineer from 12th June 1985, the date of his initial appointment on ad hoc basis for the purpose of seniority or service could be counted only from 14th December 1989, the date on which approval to his appointment was given by the State Government under the provisions of the Uttar Pradesh Regularization on Ad hoc Appointments (on posts within the purview of the Public Service Commission) Rules, 1979 as amended on 7 August 1989. The Apex Court held that when the

Rules provide that ad hoc appointments have to be regularized and the seniority has to be counted from the date of appointment, the writ petitioners could not have been deprived of the past service rendered by him from 12 June 1985 till the date of his regularization. The Supreme Court observed that the Rules had the effect of treating the appointment as a regular appointment from the date of initial appointment. The observations of the Supreme Court are as follows:-

"The scheme of the working of the Rules in the Department shows that right from 1979, the Department has been making direct recruitment after due selection and by applying the 1979 Rules which rules have been extended from time to time to subsequent recruitments, services were regularized. Validity of the scheme of these recruitments is not under challenge. In such circumstances, when the rules provide that such ad hoc appointments have to be regularized and seniority counted from the date of appointment, the writ petitioner could not be deprived of the past service rendered by him from 12th June, 1985 till the date of regularization. It is not a case of appointments made without due selection or without vacancy or without qualification or in violation of rules. The larger Bench failed to observe that the appointment of the writ petitioner was not dehors the rules nor by way of stop gap arrangement. The rules had the effect of treating the appointment as a regular appointment from initial date of appointment. In these circumstances, the principle laid down in K.C. Joshi was not applicable. It is not a case where service rendered is either fortuitous or against rules or by way of stop gap arrangement. Applying the principle laid down in Direct Recruit Class II Engineering Officers' Association, the writ petitioner is entitled to count service from 12th June, 1985. Moreover, the department has allowed the benefit of past service to other similarly placed incumbents as observed in the judgment giving rise to the appeal of the department.

Accordingly, we are unable to approve the view taken by the larger Bench to the extent it proceeds on the assumption that past service of the writ petitioner was by way of stop gap arrangement or contrary to the rules.

We, therefore, direct the State to redetermine the seniority after hearing the affected parties within six months. It is made clear that benefit of redetermination of seniority at this stage will not disturb holding of posts by any incumbent and except for benefit in pension other benefits to which the writ petitioner may be found entitled will be given only on notional basis."

(34) In the present case, the dispute is about the seniority of Assistant Engineers working in the Minor Irrigation Department. The subject matter of the decision before the Supreme Court in Narendra Kumar Tripathi's case was as to whether the benefit of ad hoc services rendered by Assistant Engineers in Rural Engineering Department prior to their regularization should be extended or not for the purpose of seniority. The judgment of the Supreme Court did direct for re-determination of the seniority list of Rural Engineering Department and, therefore, it cannot by any stretch of imagination be said that the judgment of Narendra Kumar Tripathi's case was a judgment in rem and would be applicable with the same vigour to the Engineers/employees working

in the Minor Irrigation Department or for that matter other Department of the State Government and Central Government. Thus, seniority list dated 30.8.2005 of the Minor Irrigation could not be changed on account of fact that Rural Engineering Services & Minor Irrigation are two separate entity in law, having separate service rules and seniority list.

(35) In the Minor Irrigation Department, previously, existing final seniority list dated 19.3.1996 of the feeding cadre of Assistant Engineer was withdrawn on 26.11.2001 and the final seniority list dated 19.3.1996 was reviewed and later on was cancelled. It is established from the record that a fresh tentative seniority list was published on 11.7.2005 inviting objections from all persons concerned. In response, 67 objections were said to have been received. On considering and dealing with each objection, final seniority list was prepared and was duly published on 30.8.2005. It is also on record that following the said final seniority list dated 30.8.2005, which has been tested and scrutinized upto the Apex Court, eight DPCs have been convened in past and twelve promotions on the post of Superintending Engineer have been made in the selection year 2015-16 by the Committee presided over by the Principal Secretary, Minor Irrigation Department.

(36) Feeling aggrieved by the inaction of the opposite parties in not convening the Departmental Promotion Committee, the petitioner having no other option, approached this Court by means of writ petition No. 22956 (S/S) of 2017, which was disposed of finally on 21.9.2017 by observing that considering the peculiar facts and circumstances of the case and the fact that the Chief Secretary is repeatedly asking to complete the process of promotion and submit report in a prescribed format within a time frame, it is expected from the concerned authorities that they would abide by the direction of the Chief Secretary. Accordingly, a direction was issued to the Principal Secretary, Minor Irrigation Department to complete the exercise in its letter and spirit for promotion to the post of Superintending Engineer, expeditiously, if there is no other legal impediment.

(37) It comes out from the record that as the judgment and order dated 21.9.2017 has not been complied within its letter and spirit, the petitioner has approached this Court under Contempt jurisdiction by means of Contempt Case No. 2253 of 2017, wherein the Contempt Judge, vide order dated 2.2.2018, directed the opposite party to process seniority list and make endeavour to finally decide the same, so that DPC for promotion can be held.

(38) Having seen the order dated 2.2.2018, it emerges out and it can easily be inferred that seniority list of the Minor Irrigation Department had already been finalized on 30.8.2005 and had been confirmed up till the Apex Court and considering the same fact, the State Government had passed an office memorandum dated 31.3.2016, rejecting all the representations moved by the several persons belonging to Minor Irrigation Department, all these facts were not brought to the notice of the learned Contempt Judge, which resulted in passing the order dated 2.2.2018. In our considered opinion, it was the pious duty of the State authorities to have brought correct facts to the knowledge of the Court irrespective of the fact whether they are against the department.

(39) So far as finalization of the seniority list and its significance in service jurisprudence is concerned, the Apex Court in the case of H.S. Vanikani & others Vs. State of Gujarat & others : (2010) 4 SCC 301 has held that:--

"25. Seniority is a civil right which has an important and vital role to play in one's service career. Future promotion of a Government servant depends either on strict seniority or on the basis of seniority-cum-merit or merit-cum-seniority etc. Seniority once settled is decisive in the upward march in one's chosen work or calling and gives certainty and assurance and boosts the morale to do quality work. It instills confidence, spreads harmony and commands respect among colleagues which is a paramount factor for good and sound administration. If the settled seniority at the instance of one's junior in service is unsettled, it may generate bitterness, resentment, hostility among the Government servants and the enthusiasm to do quality work might be lost. Such a situation may drive the parties to approach the administration for resolution of that acrimonious and poignant situation, which may consume a lot of time and energy. The decision either way may drive the parties to litigative wilderness to the advantage of legal professionals both private and Government, driving the parties to acute penury. It is well known that the salary they earn, may not match the litigation expenses and professional fees and may at times drive the parties to other sources of money making, including corruption. Public money is also being spent by the Government to defend their otherwise untenable stand. Further it also consumes lot of judicial time from the lowest court to the highest resulting in constant bitterness among parties at the cost of sound administration affecting public interest. Courts are repeating the ratio that the seniority once settled, shall not be unsettled but the men in power often violate that ratio for extraneous reasons, which, at times calls for departmental action. Legal principles have been reiterated by this Court in *Union of India and Another v. S.K. Goel and Others* (2007) 14 SCC 641, *T.R. Kapoor v. State of Haryana* (1989) 4 SCC 71, *Bimlesh Tanwar v. State of Haryana*, (2003) 5 SCC 604. In view of the settled law the decisions cited by the appellants in *G.P. Doval's case* (supra), *Prabhakar and Others case*, *G. Deendayalan*, *R.S. Ajara* are not applicable to the facts of the case."

(40) On due consideration, we are of view that since the judgment rendered by the Apex Court in *Narendra Kumar Tripathi* (supra) has no relevance with the department of Minor Irrigation as *Narendra Kumar Tripathi's* case was of the employee of Rural Engineering Department and further, seniority list of Engineers of Minor Irrigation Department stood finalized which was affirmed by the Apex Court and as a matter of fact has been acted upon in the past, therefore, the process for re-determination of seniority is per se bad and unjustified.

(41) At this juncture, it is pertinent to add that the Court exercising public law jurisdiction does not encourage agitation of stale claims where the right of third parties crystallizes in the interregnum. (vide *Aflatoon & Ors. vs. Lt. Governor, Delhi & Ors.* AIR 1974 SC 2077; *State of Mysore vs. V.K. Kangan & Ors.*, AIR 1975 SC 2190; *Municipal Council, Ahmednagar & Anr. vs Shah Hyder Beig & Ors.*, AIR 2000 SC 671; *Inder Jit Gupta vs. Union of India & Ors.* (2001) 6 SCC 637; *Shiv Dass vs. Union of India & Ors.*, AIR 2007 SC 1330; *Regional Manager, A.P.SRTC vs. N. Satyanarayana & Ors.* (2008) 1 SCC 210; and *City and Industrial Development Corporation vs. Dosu Aardeshir Bhiwandiwalla & Ors.* (2009) 1 SCC 168).

Thus, in view of the above, the settled legal proposition that emerges is that once the seniority had been fixed and it remains in existence for a reasonable period, any challenge to the same should not be entertained, which surprisingly, has been reopened merely on the basis of representations reflecting the arbitrariness and colourable exercise of powers.

(42) Before parting, we would like to add that during the course of arguments, it has been brought to notice by the State Counsel that the exercise for re-determination of seniority has been initiated in view of the advice given by the Law Department on 31.1.2018 taking into consideration the judgment of the Apex Court rendered in Narendra Kumar Tripathi's case (43) We are constrained to observe that the Law Department has overlooked the fact that Narendra Kumar Tripathi's case pertains to counting of ad hoc service and re-determination of seniority of the Engineers working in the Rural Engineering Department, whereas the petitioner is working in the Minor Irrigation Department and the service condition of the employees of both the departments are entirely different. It may be clarified that the department of Minor Irrigation has allowed the benefit of past service to other similarly placed incumbents but the same was denied to Narendra Kumar Tripathi. Therefore, the Apex Court directed the State Government to redetermine the seniority after hearing the affected parties within six months. It was further clarified that benefit of redetermination of seniority at this stage will not disturb holding of posts by any incumbent and except for benefit in pension and other benefits to which the writ petitioner may be found entitled will be given only on notional basis. With the above direction, the appeal of the State was dismissed. It appears that the Law Department of the State Government has not examined the matter gingerly which reflects the callous approach as it completely overlooked the fact that Rural Engineers Services Department and the Minor Irrigation Department are two separate legal entities operating in different areas and have separate set of Rules for their employees and also lost sight of the fact that the issue of seniority list finalized way back in the year 2005 of the Minor Irrigation Department had already been examined upto the Apex Court and not only remained intact for 13 years but is being acted upon since 2005 by giving promotion to several incumbents. However, we refrain ourselves from dealing with this aspect of the matter but suffice it to say that prior to giving advice on a matter, the subject matter should be examined carefully covering all aspects of the matter.

(44) For the reason aforesaid, the writ petition is allowed. The impugned instructions/directions/orders dated 7.2.2018 issued by the Chief Engineer, as also the order dated 1.2.2018 issued by the State Government reference of which is given in the aforesaid order dated 7.2.2018 is hereby quashed. The opposite parties are directed to proceed with the matter of promotion in accordance with the seniority list which has attained finality way back in the year 2005 and has been acted upon in the past. The exercise for promotion shall be completed within a maximum period of two months.

(45) Let a copy of this order be sent to the Legal Remembrancer, Department of Law, Civil Secretariat, Lucknow, for information and necessary action.

Order Date : 17 May, 2018 Ajit/-