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**CENTRAL ADMINISTRATIVE TRIBUNAL**
**PRINCIPAL BENCH**

OA No.951/2002

New Delhi this the 20th day of August, 2004.

**HON'BLE MR. V.K. MAJOTRA, VICE-CHAIRMAN (A)**
**HON'BLE MR. SHANKER RAJU, MEMBER (J)**

Mrs. Geeta Sabharwal & Others -Applicants,

(By Advocate Shri K.C. Mittal with Shri Harvir Singh)

-VERSUS-

Union of India & Others -Respondents

(By Advocate Shri S.M. Arif and Sh. R.N. Singh)

1. To be referred to the Reporters or not? Yes

2. To be circulated to other Benches of the Tribunal or not? Yes

S. Raju
(Shanker Raju)
Member (J)

CP

**CENTRAL ADMINISTRATIVE TRIBUNAL**
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**HON'BLE MR. V.K. MAJOTRA, VICE-CHAIRMAN (A)**
**HON'BLE MR. SHANKER RAJU, MEMBER (J)**

1. Mrs. Geeta Sabharwal,
wife of Mr. Anil Sabharwal
working as LDC, Department of S.T.D.
Safdarjung Hospital,
New Delhi.

2. Mr. P.N. Gaur, son of late Sh. Raja Lal,
working as LDC,
Department of Revalidation,
Safdarjung Hospital,
New Delhi.

3. Mrs. S.P. Gaur,
working as LDC,
Account Section,
Safdarjung Hospital,
New Delhi.

4. Mrs. Veena Makhija,
wife of Shri K.K. Makhija,
working as LDC,
Department of Histhopathology,
Safdarjung Hospital,
New Delhi.

5. Mrs. Veena Luthra,
wife of Shri S.K. Luthra,
working as LDC, Estate Office,
Safdarjung Hospital,
New Delhi.

-Applicants

(By Advocates Shri K.C. Mittal with Sh. Harvir Singh)

-Versus-

1. Union of India through
the Director General,
Health Services,
Nirman Bhawan,
New Delhi.

2. The Medical Superintendent,
Safdarjung Hospital, New Delhi.

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3. Bhagesh Kumar Gidwani,
E-987, Laxmi Bai Nagar,
New Delhi-110023.

4. Jasvinder Kaur,
4/435A Bhola Nath Nagar,
Shahdara, Delhi.

5. Satya Prakash Sharma,
E-2, Madangir, New Delhi.

6. Rakesh Mohan Verma,
ST-21/C/55,
New Mahavir Nagar,
New Delhi.

7. Rajinder Singh,
V.&PO Jharsa, Gurgaon.

8. Neelam Rani Sharma,
36/4, Double Storey,
Ashok Nagar, PO Tilak Nagar,New Delhi.

9. Usha Oberai, A-2/14, Jeevan Jyoti Apartments,
Pritam Pura, Delhi.

10. Kailash Chand Bhatt,A-67 Kidwai Nagar,
New Delhi.

11. V.K. Rajan, G-420, Nauroji Nagar,
New Delhi.

12. Preetam Ram,846/A, R.K. Puram,
New Delhi.

13. Dinesh Kumar,14, Raj Park,
Sultanpur Road, Nangloi, Delhi.

14. Krishan Kumar,F-170, Nanakpura,
New Delhi.

15. Rachna Rathore, BG-I/8-C, Shalimar Bagh,
Delhi.

16. Anju Wadhwa,CC/51-A, DDA Flats,
Hari Nagar, New Delhi.

17. Bhawar Singh, E-1499 Netaji Nagar,
New Delhi.

18. Ram Lal, 92-14, Sector-IV,
M.B. Road, Pushp Vihar,
New Delhi.

19. Sh. Sudhir Kr. Gupta
387, DDA Flats (RPS),
Mansarowar Park, Shahdara,
Delhi – 32

20. Sh. Hardayal Singh
988, Laxmi Bai Nagar,
New Delhi – 110 023

21. Ms. K. Jyoti
C-103, Pragati Vihar Hostel,
New Delhi – 110 003

22. Ms. Sheetal Mukaddam
1136, Laxmi Bai Nagar,
New Delhi – 110 023

23. Ms. Anita Batish
C-188, Kidwai Nagar,
New Delhi – 110 023

24. Sh. Dinesh Chand Bisht
600, Sect – 5, R.K. Puram,
New Delhi.

25. Sh. Arvind Pareek
D-34, Sector – 56,
Noida (UP).

26. Ms. Pushpa Singh
767, Sect – 6, R.K. Puram,
New Delhi.

27. Sh. T.K. Banerjee
A-155, Kidwai Nagar,
New Delhi – 110 023

28. Sh. A.P. Chakraborty
51, Sector – 6, R.K. Puram,
New Delhi – 110 022.

29. Ms. Philomina Dung Dung
149-H, Pkt-4, Mayur Vihar Ph-I,
Delhi – 91.

30. Sh. Nandan K.K.
50, Sect – 6, R.K. Puram,
New Delhi.

31. Ms. Savita Nagpal
B-G-5/16C, Paschim Vihar,
New Delhi

32. Sh. Deelip Kr. Chanda
RZ-13, Geetanjali Park,
Sagar Pur (West),
New Delhi – 110 046.

33. Ms. Malti KAthuria
KG-1/282, Vikas Puri,
New Delhi

34. Sh. Raj Kumar Sharma
H.No. 95, Mohalla-Mahalwala,
Vill-Saidulajab, P.O. Mehrauli,
New Delhi – 110 030.

35. Sh. Madan Lal
1024, Sect – 5, R.K. Puram,
New Delhi – 110 022.

36. Sh. V.N.S. Maratha
G-280, Nauroji Nagar,
New Delhi – 110 029.

37. Sh. Raj Kinger
1680, Rani Bagh,
New Delhi.

38. Sh. O.P. Khandwal
WZ-427-A, Raj Nagar,
Palam Colony,
New Delhi – 110 045.

39. Sh. Man Singh Nimesh
336-AB, Munirka Village,
New Delhi.

40. Sh. Swapan Kr. Soam
A-82, Laxmi Bai Nagar,
New Delhi – 110 023

41. Sh. Bharat Bhushan
H. No. 163,
Vill. & P.O. Surehra,
New Delhi – 110 043

42. Sh. Shiv Dutt
H. No. 333,
Purva Sheirlh Lal,
Meerut City (UP).

43. Ms. Smiriti Paul
G-1429, Chitranjan Park,
New Delhi – 110 019.

44. Sh. Pradeep Kr. Suri
F-102, Jeevan Park, Pankha Road,
New Delhi – 110 058.

45. Sh. Naresh Kumar
H. No. 14/120, Subhash Nagar,
New Delhi – 110 027.

46. Ms. Renu Garg
448, Sect-2,
Pkt-6II, Rohini,
Delhi – 85.

47. Sh. Sandeep Nagar
1552, Laxmi Bai Nagar,
New Delhi – 110 022

48. Sh. Rajan Garg
228, Deepali Preetam Pura,
Delhi – 34.

49. Ms. Usha
220, Savitri Nagar,
New Delhi – 110 017.

50. Sh. Charan Singh
E-16/2006, Bapa Nagar,
Padam Singh Road, Karol Bagh,
New Delhi – 110 005.

51. Ms. Veena Taneja
B-255, Chawkhandi,
JJ Colony, Tilak Nagar,
New Delhi.

52. Sh. Sanjay Sharma
J-67, Ashok Vihar Ph-I,
Delhi – 52.

53. Sh. Asha Ram Meena
H. No. 33A, Gali No. 7/3,
Shakti Vihar, Mithapur,
Delhi – 44.

54. Sh. Sukhveer Singh Nagar
B-227, Pilanji Gaon, Sarojini Nagar,
New Delhi.

55. Ms. Alka
H. No. 442, Naraina Vihar,
Delhi – 28.

56. Sh. Bipul Kumar
170, Guru Ram Das Nagar,
Laxmi Nagar,
Delhi – 92.

57. Sh. Ram Niwas Sharma
WZ-27, Vill-Posangi Pur,
New Delhi.

58. Ms. Mary Scott
D-4/1585, Naveen Sahadra,
Delhi – 32.

59. Sh. Chhatarpal
515B, Shanti Marg, Gali No. 2,
Mandawali, Faijalpur,
New Delhi – 110 092.

60. Vijay Pal,
D-970, Laxmi Bai Nagar,
New Delhi.

61. Anil Kumar Vohra,
G-380,
Nauroji Nagar,
New Delhi.

62. Deepak Joshi,
A-123,
Kidwai Nagar,
New Delhi.

63. Vinay Kumar Garg,
973, Sector-I,
R.K. Puram,
New Delhi.

64. Heema Bhatt,
2, Raj Nagar,
S.J. Staff Quarters,
New Delhi.

65. Raj Kumari,
H-392-B,
Prem Nagar,
Gurgaon, Haryana.

66. Vijay Goel,
72/I, East Moti Bagh,
Sarai Rohilla,
New Delhi.

-Respondents

(By Advocates Shri S.M. Arif and sh. R.N. Singh)

**O R D E R**

**Mr. Shanker Raju, Member (J):**

Following reliefs have been claimed by applicants in this OA:

"i) that the seniority list dated 27th Nov.2001 (Annexure A-19) be quashed and set aside; and

ii) direct the respondents to fix the seniority of the applicants from the date they were selected in accordance with the Rules and joined their duties;

iii) direct the respondents to promote the applicants in accordance with the Rules at least from the date when their juniors have been promoted if not earlier with consequential benefits including arrears of pay and also further promotion to the next higher post;

iv) and pass such other and further orders as are deemed fit and proper in the facts and circumstances of the case."

2. On framing of the Safdarjung Hospital Class III Recruitment Rules, 1973, recruitment to the posts of LDC required matriculation with experience in typewriting. By a memorandum dated 4.11.75 by the DoPT, which was followed by OM by Director General Health Services, Government of India dated 17.12.76 recruitment to the posts of LDC and Stenographers in the subordinate offices located in Delhi was to be made by the Staff Selection Commission (SSC).

3. The SSC by a letter dated 30.4.77 intimated to the Directorate of Health Services that in the event the posts of LDCs and Typists are required to be filled up urgently arrangements should be made through other authorized channels. As a result thereof a requisition was sent to the employment exchange, which sponsored 27 candidates.

4. After a written test on the pattern of the SSC those who qualified with 55 marks and above were selected for typewriting test which was conducted. Respondents issued letters of appointment to applicants in 1978. The seniority list of LDC was issued on 1.1.79, which does not show appointments of applicants as ad hoc.

5. On 11.10.82 respondents issued circular regarding regularisation of services of ad hoc employees by the SSC, which was followed by an order dated 3.12.85, regularizing applicants from the date of their initial appointments.

6. By an order dated 19.5.86 earlier order was rescinded and superseded and applicants were regularized from 30.11.85 from the date of passing the examination.

7. A seniority list issued on 1.6.87 shows date of regularization of applicants as 30.11.85, which was revised on 9.9.87. On lowering the seniority, representations preferred were rejected by an order dated 24.2.89.

8. By an order dated 8.11.89 it is intimated that orders of regularization were cancelled which was represented to. Lastly, by an order dated 27.3.91 orders issued on 3.12.85 and 19.5.86 regarding regularisation of applicants were cancelled with a threat of termination. The aforesaid led to filing of OA-820/91 where termination was stayed. On completion of the pleadings OA was dismissed by an order dated 4.8.95 by the Tribunal with the following observations:

> "18. In the conspectus of the facts and circumstances of the case, we find ourselves unable to grant the relief prayed for by the applicants. At the same time we cannot help noticing that some of the applicants have put in service continuously, even if on ad hoc basis, since 1978, and their failure to qualify in the SSC Spl. Exam. Of 1983 implies that they may have to be retrenched, thereby losing their very means of livelihood which has sustained them these 15-18 years, which will undeniably be very harsh on them. Under the circumstances, should the respondents be inclined to give the applicants another opportunity to appear in the next SSC Exam., by granting them age relaxation, and regularize such of those who are successful in that exam. From the date of the result of that exam., nothing contained in this judgment will prevent them from doing so.

19. This O.A. is disposed of accordingly. Interim orders passed earlier are vacated. No costs."

9. The aforesaid decision was challenged by applicants in SLP (C) 76/96 which was converted on admission to CA-98/97. The Apex Court by an order dated 21.10.1997 passed the following orders:

> "Accordingly, the appeal is allowed, impugned order dated August 4, 1995 of the Tribunal is set aside and OA filed by the appellants is allowed to the extent that the office order dated march 27, 1991 is set aside."

After the decision (supra) of the Apex Court applicants have sought for counting of their service from the date of appointments, which was rejected vide separate orders passed, treating the seniority of applicants from 30.11.85, giving rise to the present OA.

10. Learned counsel of applicants Shri K.C. Mittal relies upon the following observations of the Apex Court in Writ Petition order dated 21.10.97:

> "We are also aware of the decision of this Court that there cannot be any claim for regularization for having worked for a number of years if the regularisation was not in accordance with the rules. That is not so here. As noted above in the present case appointments were made in accordance with the Rules which appointments have continued for a number of years and cannot be treated as ad hoc or fortuitous."

11. In the above conspectus it is stated that once a finding has been arrived at by the Apex Court that appointments were made in accordance with Rules and the incumbents have continued in service for number of years, the service rendered cannot be treated as ad hoc or fortuitous. Accordingly, relying upon the Constitution Bench decision of the Apex Court in **Direct Recruit Class II Engineering Officers' Association** v. **State of Maharashtra**, (1990) 2 SCC 715, it is contended that decision of

the respondents to accord seniority from 30.11.85 is not legally sustainable and applicants are entitled for reckoning their seniority from the date of their initial appointments.

12. It is further stated that applicants are discriminated in the matter of promotion as juniors to applicants have been granted promotion, which cannot be sustained in the light of Articles 14 and 16 of the Constitution of India.

13. On the other hand, respondents' counsel vehemently opposed the contentions. The preliminary objection raised is that this Tribunal has no jurisdiction to interpret the judgment of the Apex Court.

14. Learned counsel also relied upon the following observations of the Apex Court in W.P. decision dated 21.10.97:

> "The appellants have been now working as LDCs for varying periods from 18 to 20 years allegedly on ad hoc basis. Their contention is they have been regularly appointed as per statutory rules. Before us, however, they have given up their challenge to the order dated May 19,1986 faced with, perhaps, the consequences of losing their jobs altogether. Before the Tribunal there were 11 petitioners and one (Mrs. Udal Singh) seems to have dropped out from these proceedings."

In the light of the above it is contended that by an order dated 19.5.96 the earlier order dated 3.12.85 regularising applicants from the date of their initial appointments was superseded and as challenge to the order dated 19.5.88 has been foregone by applicants before the Apex Court the ratio decidendi of the decision is that 19.5.86 order is restored, according to which the date of appointment on regular basis of applicants is 30.11.85. Accordingly the relief of their regularisation from the date of initial engagement is deemed to be rejected and on that count the seniority cannot be claimed.

15. The learned counsel for respondents further stated that once the seniority is settled in 1989, reopening of the same at this belated stage would unsettle the settled position.

16. We have carefully considered the rival contentions of the parties and perused the material on record.

17. Before proceeding to resolve the controversy it is relevant to enumerate the settled position of law under Article 141 of the Constitution of India as a doctrine of precedent, inter alia, defining the ratio decidendi. A Constitution Bench of the Apex Court in a majority decision in **Islamic Academy of Education v. State of Karnataka**, (2003) 6 SCC 697, held as follows:

> "2. Most of the petitioners/applicants before us are unaided professional educational institutions (both minority and non-minority. On behalf of the petitioners/applicants it was submitted that the answers given to the questions, as set out at the end of the majority judgment, lay down the true ratio of the judgment. It was submitted that any observation made in the body of the judgment had to be read in the context of the answers given. We are unable to accept this submission. The answers to the questions, in the majority judgment in Pai case (2002 [8] SCC 481) are merely a brief summation of the ratio laid down in the judgment. The ratio decidendi of a judgment has to be found out only on reading the entire judgment itself. The answer to the question would necessarily would have to be read in the context of what is set out in the judgment and not in isolation. In case of any doubt as regards any observations, reasons and principles, the other part of the judgment has to be looked into. By reading a line here and there from a judgment, one cannot find out the entire ratio decidendi of the judgment We, therefore, while giving our classifications, are disposed to look into other parts of the judgment other than those portions which may be relied upon".

**18.** A Constitution Bench of the Apex Court in **Union of India v. Chajju Ram** through LRs , 2003 (5) SCC 568 held as follows:

"It is now well settled that a decision is an authority for what it decides and not which can logically be deduced therefrom. It is equally well settled that a little difference in facts or additional facts may lead to a different conclusion."

**19.** A Division Bench of the Apex Court in **Ashwani Kumar Singh v. U.P. Public Service Commission**, 2004 SCC (L&S) 95 as to the interpretation of judgment observed as under:

"10. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are not to be read as Euclid's theorems nor as provisions of the statute. These observations must be read in the context in which they appear. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for Judges at embark upon lengthy discussions, but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In London Graving Dock Co. Ltd. Vs. Horton (AC at page 761) Lord Macdermott observed: (All ER p.14 C-D).

" The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished Judge....."

11. In Home Office Vs. Dorset Yacht Co. Lord Reid said, "Lord Atkin's Speech ..... is not to be treated as if it were a statutory definition. It will require qualification in new circumstances" (All ER p.297 g-h). Megarry, J. in Shepherd Homes Ltd. Dham (No.2) observed: (All ER p.1274 d-e) "One must not, of course, construe even a reserved judgment of even Russell, L.J. as if it were an Act of Parliament,". In Herrington Vs. British Rlys. Board Lord Morris said : (All ER p.761c)

"There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered

that judicial utterances are made in the setting of the facts of a particular case".

12. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper."

20. Another Division Bench of the Apex Court in **Divisional Controller, KSRTC v. Mahadeva Shetty and Anr.**, (2003) 7 SCC 197 in paragraph 23 observed as under:

"23. So far as Nagesha case (1997) 8 SCC 349) relied upon by the claimant is concerned, it is only to be noted that the decision does not indicate the basis for fixing of the quantum as a lump sum was fixed by the Court. The decision ordinarily is a decision on the case before the court, while the principle underlying the decision would be binding as precedent in a case which comes up for decision subsequently. Therefore, while applying the decision to a later case, the court dealing with it should carefully try to ascertain the principle laid down by the previous decision. A decision often takes its colour from the question involved in the case in which it is rendered. The scope and authority of a precedent should never be explained unnecessarily beyond the needs of a given situation. The only thing binding as an authority upon a subsequent Judge is the principle upon which the case was decided. Statements which are not part of the ratio decidendi are distinguished as obiter dicta and are not authoritative. The task of finding a principle is fraught with difficulty as without an investigation into the facts, it cannot be assumed whether a similar direction must or ought to be made as a measure of social justice. Precedents sub silentio and without arguments are of no moment. More casual expressions carry no weight at all, nor every passing expression of a Judge, however eminent, can be treated as an ex cathedra statement having the weight of authority."

21. As regards obiter dictum in **Director of Settlements, A.P. v. M.R. Apparao**, (2002) 4 SCC 638 observed as under:

"A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. An

> "obiter dictum" as distinguished from a ratio decidendi is an observation by the Court on a legal question suggested in a case before it but not arising in such manner as to require a decision. Such an obiter may not have a binding precedent but it cannot be denied that it is of considerable weight. (Para7), Director of Settlements, A.P. Vs. M.R. Apparao, (2002) 4 SCC 638".

22. As regards decision of the Apex Court and its interpretation the following observations have been made by the Apex Court in **G.M., N. Railway v. Sarvesh Chopra**, 2002 (4) SCC 45:

> " The submission that an "excepted matter" should be one covered by a clause which provides for a departmental remedy and is not arbitrable for that reason cannot be justified on the basis of decisions in Vishwanath Sood Vs. Union of India and FCT Vs. Sreekanth Transport. A decision of the Supreme Court is an authority for the proposition which it decides and not for what it has not decided or had no occasion to express an opinion on. Those decisions cannot be read as holding nor can be relied on as an authority for the proposition by reading them in a negative ways that if a departmental remedy them in a negative way that if a departmental remedy for settlement of claim was not provided then the claim would cease to be an "excepted matter" and such should be read as the decision of the Supreme Court. (Para 9) G.M.N. Rly Vs. Sarvesh Chopra, (2002) 4 SCC 45: AIR 2002 SC 1272."

23. As regards seniority, a Constitution Bench of the Apex Court in **Prafulla Kumar Das and Others v. State of Orissa and Others**, 2004 SCC (L&S) 121 observed as under:

> "Seniority is not a fundamental right but is merely a civil right. The right of seniority in the case was also not a vested or accrued right."

24. As regards unsettling the settled position, in the matter of seniority the Apex Court in **B.S. Bajwa v. State of Punjab**, 1998 (2) SCC 523 clearly ruled that after a long lapse of time seniority cannot be allowed to be disturbed.

25. If one has regard to the above decisions, what is discernible as a mandate is that the ratio decidendi has to be inferred and carved out only on reading the entire judgment. The ratio is what has been set out in the judgment. In case of any doubt the other parts of the judgment are to be looked into. But reading in isolation and picking up parts of the judgment would not be a legal process to determine ratio decidendi. The interpretation of a decision of the Apex Court, which is binding judgments are not to be construed as a statute. A decision takes its colour from the question involved. The authority of precedent should not be expanded. The only binding authority is the principle laid down. The statements which are not part of the ratio are obiter dicta.

26. The judgment of the court as regards obiter dicta is not a binding precedent but is of a considerable weight. A ratio is a proposition by which it decides and not what has not been decided.

27. Accordingly, applying the above ratio, history of the present litigation emanates from the OA filed before the Tribunal where applicants were aggrieved by the impugned termination and modification of their date of regularisation. It is pertinent to note that the seniority has not been claimed in the OA. With the rejection of OA by the Tribunal resort to SLP was also restricted to the relief prayed in the rejoinder filed before the Apex Court . There has been a reference to the seniority and prayer to the effect from the date of initial engagement.

28. The Apex Court while dealing with the contentions of the petitioners also took cognizance of two orders dated 19.5.86 and 27.3.91.

29. The Apex Court though observed that applicants had been working as LDCs on ad hoc basis for last 18 to 22 years and their contention that they have been regularly appointed as per the statutory

rules but the challenge made to the order dated 19.5.86 and their relief regarding regularisation from the date of initial engagement has been given up on the apprehension of loosing the jobs. In this conspectus SLP was restricted to the challenge to order dated 27.3.91 passed by the respondents whereby apart from canceling the order dated 3.12.85 and 19.5.86 termination was proposed.

29. The Apex Court took into cognizance of change of date of regularisation of applicants and also the seniority list issued incorporating the aforesaid changed date of regularisation as commencement of the seniority of applicants. In this conspectus the following observations have been made by the Apex Court:

> "Be that as it may. The question that arises for our consideration is: if the appellants were appointed on ad hoc basis from the start and if not were the orders regularizing their services necessary. We have seen that recruitment to the LDCs in the hospital is governed by the statutory rules framed by the Central Government under proviso to Article 309 of the Constitution. It is also not disputed that the appellants were selected after they had undergone the process of selection by the Selection Board. It is correct that by subsequent Government resolution the test was to be conducted by SSC and so also selection for appointment to the post of LDC. We need not go into the question if in the existence of the statutory rules could they be amended to the extent that certain functions were left to be performed by SSC and not by the DPC. It is not that the SSC could prescribe any qualifications different than that prescribed in the recruitment rules for appointment to the post of LDCs. The fact, however, remains that when the hospital authorities approached the SSC it expressed its inability to conduct the test and select candidates for appointment to the post of LDCs in the hospital and rather told them that the authorities could themselves make arrangement to fill up the vacancies through other authorized channels if it was urgent. SSC did not say that the authorities could fill up the vacancies on ad hoc basis only till such time candidates sponsored by SSC were made available to the hospital. In pursuance to the communication, received from the SSC the hospital authorities asked the local employment exchange to sponsor candidates and at the same time issued a circular allowing the eligible departmental candidates to apply for the post of LDCs. Posts were in existence. The authorities

> fell back on the recruitment rules, conducted the examination, found the appellants to fulfill the qualifications and then selected them by duly constituted DPC. The respondents have neither stated nor contradicted that the selection of the appellants was not in conformity with the recruitment rules. That being so we fail to see why the order of May 19, 1985 regularising the services of ad hoc LDCs including the petitioners should have been cancelled on technical grounds five years after they had been regularized and absorbed in the cadre."

30.. If one has regard to the above the question fell for consideration of the Apex Court was that the posts on which applicants were appointed were in existence and on conducting examination on refusal of the SSC to conduct the same the petitioners were selected by a duly constituted DPC. The selection was neither objected to nor was found inconformity with the recruitment rules. Accordingly orders passed on 19.5.86 has been restored.

31. The principle of law, i.e., the ratio decidendi emerged from the order by reading in its entirety is that applicants had been found duly selected in accordance with rules at the time of initial engagements.

32. The Apex Court discussed the law in vogue regarding appointments on ad hoc or regular basis pertaining to applicants and gave a categorical finding as to the appointments of applicants made in accordance with rules and continued for number of years. It has been overruled that the appointments are either ad hoc or fortuitous. Accordingly, order dated 27.3.91 has been set aside, which restores respondents'order dated 19.5.86, whereby applicants were regularized from 30.11.85.

33. However, we find that in the conspectus of status of the initial appointments a reference has been made to a decision of the Apex Court by observing as under:

"In H,C. Puttaswamy and others Vs. The Hon'ble Chief Justice of Karnataka High Court, Bangalore and others 1991 Supp (2) SCC 421 appointments to the posts of typists were made by the Chief Justice of the High Court of Karnataka in contravention of the provisions of the Karnataka Subordinate Courts (Ministerial and other Posts) Recruitment Rules, 1977 under which power to make selection was vested in the State Public Service Commission. The selection was required to be made by written test followed by interview. The appointing authority was District Judge of the particular district where appointments were to be made. In a writ petition filed by certain candidates the High Court of Karnataka set aside the appointments being violative of Articles 14 and 16(1) of the Constitution. This Court agreed that the appointments made by the Chief Justice of the High Court were not legal. This Court further found that the candidates had been working for over 10 years and they possessed qualifications more than what was the requirement under the Rules. Some of the candidates even earned higher qualification during their service and some were promoted to higher cadre as well. They were now over-aged for entry into any other service. This Court observed: "we could only imagine their untold miseries and of their family if they are left at the mid-stream. Indeed, it would be an act of cruelty at this stage to ask them to appear for written test and viva voce to be conducted by the Public Service Commission for fresh selection." "The Court also referred to certain precedents where on equitable considerations this Court did not set aside the appointments even though the selection of the candidates was held to be illegal and unsupportable. The Court said: "The precedents apart, the circumstances of this case justify an humanitarian approach and indeed, the appellants seem to deserve justice ruled by mercy." The Court, therefore, directed that the candidates should be treated to be regularly appointed with all the benefits of the past service.

In Baleshwar Dass & Ors. Vs. State of U.P. & Ors. [(1980) 4 SCC 226], this Court while examining, in the context of the case before it, as to what is a substantive capacity vis-à-vis an appointment to a post, observed as under:-

"If a public servant serves for a decade with distinction in a post known to be not a casual vacancy but a regular post, experimentally or otherwise kept as temporary under the time-honoured classification, can it be that his long officiation turns to ashes like a Dead Sea fruit because of a label and his counterpart equal in all functional respects but with ten years less of service steals a march over him because his recruitment is to a permanent vacancy? We cannot anathematize officiation unless there are reasonable differentiations and limitations."

> We are also aware of the decision of this Court that there cannot be any claim for regularization for having worked for a number of years if the regularization was not in accordance with the rules. That is not so here. As noted above in the present case appointments were made in accordance with the Rules which appointments have continued for a number of years and cannot be treated as ad hoc or fortuitous.
>
> Accordingly, the appeal is allowed, impugned order dated August 4, 1995 of the Tribunal is set aside and OA filed by the appellants is allowed to the extent that the office order dated March 27, 1991 is set aside."

34. If one has regard to the above, what has been in view the past service has been restored to petitioners in these cases. This has led to a positive finding by the Apex Court in so far as initial appointments of applicants in accordance with rules and on regular basis without being ad hoc or fortuitous. However, the aforesaid observation as per the impact goes contrary to the relief accorded to applicants whereby their regularisation from 30.11.85 has been restored and the request for ante dating regularisation from initial appointments has been turned down impliedly.

35. Another angle which needs to be probed and settled is the issue of seniority. In the OA the relief prayed does not incorporate accord of seniority from the date of initial appointments. However, in view of the decision of the Apex Court in Direct Recruit Class II Engineering Officers' Association (supra) an attempt has been made by applicants to agitate the issue of seniority in SLP before the Apex Court. The aforesaid issue of seniority has not been specifically dealt with but observing that the appointment which refers to appointments at initial stage were in accordance with the rules. This aspect of the matter has been left open.

36. The respondents by rejecting the representations of applicants on 27.11.2001 as a compliance of the orders of the Apex Court were right in upholding the date of regularisation as 30.11.85 but the seniority part has also not been specifically dealt with. However, a reference has been made to the Directorate General, Health's letter dated 27.7.2000 whereby the seniority has been fixed from the date of regularisation in the grade of LDC.

37. In Direct Recruit's case (supra) the following principles have been laid down by the Apex Court:

> "47. To sum up, we hold that:
>
> (A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.
>
> (B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.
>
> (C) When appointments made from more than one source, it is permissible to fix the ratio for recruitment from the different sources, and if rules are framed in this regard they must ordinarily be followed strictly.
>
> (D) If it becomes impossible to adhere to the existing quota rule, it should be substituted by an appropriate rule to meet the needs of the situation. In case, however, the quota rule is not followed continuously for a number of years because it was impossible to do so the inference is irresistible that the quota rule had broken down.
>
> (E) Where the quota rule has broken down and the appointments are made from one source in excess of the quota but are made after following the procedure prescribed by the rules for the appointment, the appointee should not be pushed down below the

appointees from the other source inducted in the service at a later date.

(F) Where the rules permit the authorities to relax the provisions relating to the quota, ordinarily a presumption should be raised that there was such relaxation when there is a deviation from the quota rule.

(G) The quota for recruitment from the different sources may be prescribed by executive instructions, if the rules are silent on the subject.

(H) If the quota rule is prescribed by an executive instruction, and is not followed continuously for a number of years, the inference is that the executive instruction has ceased to remain operative.

(I) The posts held by the permanent Deputy Engineers as well as the officiating Deputy Engineers under the State of Maharashtra belonged to single cadre Deputy Engineers.

(J) The decision dealing with the important questions concerning a particular service given after careful consideration should be respected rather than scrutinized for finding out any possible error. It is not in the interest of service to unsettle a settled position.

(K) That a dispute raised by an application under Article 132 of the Constitution must be held to be barred by principles of res judicata including the rule of constructive res judicata if the same has been earlier decided by a competent court by a judgment which became final."

38. It is trite law that when ad hoc officiation is followed by regularisation the period of ad hoc service has to be reckoned for the purpose of seniority as non-grant of seniority would turn the long officiation to ashes. The observations of the Apex Court regarding appointments of applicants in accordance with rules although their regularisation has been restricted to 30.11.85, in so far as seniority is concerned the Constitutional Bench decision in Direct Recruit's' case (supra) holds the field.

39. As regards the issue of unsettling the settled position in the matter of seniority although the affected parties are impleaded and have been given due opportunity, yet we find that the tentative seniority list was objected to by applicants through representations and then the rejection of representations gives a cause of action to applicants.

40. In our considered view the issue of seniority was not before the Apex Court and nothing precludes us from going into the aspect of seniority in the present OA. The ratio of Apex Court was to set aside the order whereby the selection process was found de hors the rules and to intact the appointments already made regularisation some time has nothing to do with the seniority as the observations of the Apex Court in the light of precedents as a peculiar case despite partly allowing the SLP has an effect as a ratio decidendi which is inferred from the reading of the entire order that the intention was to accord legality to the appointments of applicants which were according to the Rules.

41. As this finding of appointments of applicants in accordance with rules is no more res integra and has attained finality as a binding principle on us even if an obiter dicta the seniority is to be determined by the respondents in accordance with the settled principles of law.

42. In a recent decision the Apex Court in **Santosh Kumar v. State of A.P.,** (2003) 5 SCC 511, held that:

> "Once the services of the respondent and other promotees were regularized it cannot be contended that their initial appointment was only on ad hoc basis and not according to the Rules and made as a stopgap arrangement."

43. Accordingly, for the foregoing reasons, we dispose of the OA with a direction to the respondents to re-consider seniority of applicants as LDCs in the light of our observations made above, within a period of three

months from the date of receipt of a copy of this order. In case of grant of seniority from the dates of initial appointments applicants shall be entitled to all consequential benefits. No costs.

S. Raju
**(Shanker Raju)**
**Member (J)**

V.K. Majotra
20.8.04
**(V.K. Majotra)**
**Vice-Chairman(A)**

'San.'