

**BEFORE THE UTTARAKHAND PUBLIC SERVICES TRIBUNAL
AT DEHRADUN**

Present: Hon'ble Mr. Justice U.C.Dhyani

----- Chairman

Hon'ble Mr. Rajeev Gupta

-----Vice Chairman (A)

CLAIM PETITION NO. 48/DB/2019

1. Subhash Chandra Juyal s/o Late Shri Vishnu Dutt Juyal, Assistant Engineer, Uttarakhand Jal Sansthan, North Division, Dehradun.
2. Vinod Pandey, s/o Late Shri Gajadhar Pandey, Assistant Engineer, Uttarakhand Jal Sansthan, Raipur Division, Dehradun.
3. Harish Kumar Bansal s/o Shri Hukum Chand Bansal, Assistant Engineer, Uttarakhand Jal Sansthan, Rishikesh.
4. Lokendra Singh Kumai s/o Shri Kalyan Singh Kumai, Assistant Engineer, Uttarakhand Jal Sansthan, Uttarkashi.
5. Bhupendra Singh Negi s/o Shri Karan Singh, Assistant Engineer, Uttarakhand Jal Sansthan, Pitthuwala, Dehradun.
6. Rakesh Kumar Verma s/o Shri Ram Kishan Verma, Assistant Engineer, Uttarakhand Jal Sansthan, Kotdwar.
7. Sunil Singh Bisht s/o Shri Amar Singh Bisht, Assistant Engineer, Uttarakhand Jal Sansthan, Pauri.
8. Girish Chandra Bhatt s/o Shri Mahendra Dutt Bhatt, Assistant Engineer, Uttarakhand Jal Sansthan, Dev Prayag.

.....**Petitioners.**

vs.

1. State of Uttarakhand through Secretary Peyjal, Uttarakhand Shasan, Dehradun, Uttarakhand.
2. The Chief General Manager, Uttarakhand Jal Sansthan, Jal Bhawan, B-Block, Nehru Colony, Dehradun, District Dehradun.
3. Rajesh Kumar Nirwal.
4. Shiv Kumar Rai
5. Madan Sen Verma
6. Sanjay Kumar Srivastav.
7. Vinod Kumar Srivastav.
8. Shishupal Singh.
9. Rakesh Kumar
10. Arun Kumar
11. Rama Shankar.
12. Satyawat Singh Rawat.

[Private respondents No.3 to 11 are Assistant Engineers in Uttarakhand Jal Sansthan]

.....**Respondents.**

Present: Sri M.C.Pant & Sri L.K.Maithani, Advocates, for the Petitioners.

Sri V.P.Devrani, A.P.O., for Respondent No.1

Sri B.B.Nainthani, Advocate, for Respondent No. 2

Sri M.R.Saklani, Advocate, for the Respondents No. 6 & 10.

JUDGMENT

DATED: MARCH 31, 2021

Justice U.C.Dhyani, Chairman
Rajeev Gupta, Vice Chairman (A)

1. This claim petition has been filed by the petitioners for seeking the following reliefs:

“(a) To issue an order or direction, directing to the respondents to quash the effect and operation of the impugned order dated 17.09.2018 and seniority list dated 06.07.2017 upto the extent where it relate to the inter-se-seniority between the petitioners and private respondents after calling the entire records from the respondents and treat the petitioners as a bonafide employee considering the cause of the petitioners on the basis of Doctrine of quantum of meruite.

(b) To issue an order or direction directing to the respondents to count entire length of service from the initial date of appointment shown as under artificial nomenclature of daily wager, as regular and substantive for the purpose of grant of pensionery benefits and other service benefits including seniority, promotion and accordingly redraw the fresh seniority list of A.E. of the department etc. after calling the entire records from the respondents.

(c) To issue any other order or direction which this Hon’ble Tribunal may deem fit and proper in the circumstances of the case.

(d) To award the cost of the petition in favour of the petitioners.”

2. The facts giving rise to the instant petition are as follows:

Petitioners were appointed as Junior Engineers between 1988 and 1991 in the then Garhwal Jal Sansthan and are continuously working with Respondent No. 2 since then. Since 30.06.2014, all the petitioners are working as Assistant Engineers in Uttarakhand Jal Sansthan. In the

year 2003, 475 employees of Jal Sansthan were regularized, but in spite of being eligible, petitioners could not be regularized along with other employees. Petitioners approached Hon'ble High Court of Uttarakhand at Nainital, and *vide* order dated 04.08.2004 of Hon'ble Court, petitioners were regularized *w.e.f.* 17.08.2004. Respondents, instead of fixing the *inter se* seniority of the petitioners *vis-à-vis* other Junior Engineers, after taking into account the date of initial appointment of the petitioners, as ordered by the Hon'ble Court, fixed the *inter se* seniority of the petitioners solely on the basis of their dates of birth. Petitioners moved various representations on different dates as well as legal notice to the respondents, but to no avail. Petitioners sought information under RTI and they were supplied the information by way of two letters dated 01.09.2015 and 26.05.2017 of the State Government, in which the Additional Secretary of the State Government, *vide* its letter dated 01.09.2015 informed the Chief General Manager, Jal Sansthan for providing a specific proposal and details of the vacancies and other service record *w.e.f.* 01.09.1996 as per rules and consequently, on 26.05.2017, also informed all the Additional Chief Secretaries of the State of Uttarakhand, by referring a decision taken by the Cabinet on 17.11.2016, in which it has been mentioned that the Chief Secretary/ Secretary Personnel/ Secretary Finance and Secretary, Law shall re-examine the aforesaid matter and accordingly directed to provide all the details as required. This information itself shows the inaction on the part of the respondents.

The petitioners had earlier filed a Claim Petition No. 26/DB/2018 before this Tribunal which was disposed of at the admission stage *vide* order dated 25.06.2018 directing Respondent No. 1 to decide the pending representation of the petitioners dated 23.05.2017. Subsequently, Respondent No. 1 *vide* the impugned order dated 17.09.2018 has rejected the representation of the petitioners, which is under challenge in the present petition.

3. Counter Affidavits have been filed by the private respondents No. 6 and 10 as well as official respondents No. 1 and 2. Rejoinder Affidavits to these Counter Affidavits have also been filed on behalf of the petitioners.

4. We have heard learned Counsel for both the sides who have cited various rulings in support of their contentions. Learned Counsel for the respondent No. 2 has also submitted written arguments.

5. The contention of the petitioners is that Hon'ble High Court in its order dated 04.08.2004 had *inter-alia* ordered as under:

"The petitioners claim seniority from the date they were given ad hoc appointment. This question shall also be considered by the Jal Sansthan while reckoning the seniority of the petitioners."

Instead of fixing the inter-se seniority of the petitioners *vis-à-vis* all other incumbents of the post of Junior Engineer, after taking into account the date of initial appointment of the petitioners, the concerned authority fixed the inter-se seniority of the petitioners, based on the dates of their birth, *vide* their Office Memorandum dated 02.08.2008, while they should have reckoned it from their initial dates of appointment. The petitioners repeatedly submitted various representations to the official respondents but this did not bear any fruit with the result that the petitioners remained almost at the bottom of the seniority list of the Junior Engineers in Jal Sansthan *vis-à-vis* others, who joined service later than the petitioners. In the seniority list dated 17.01.2013, their representation was rejected in a cryptic manner on the ground that since the regularization of the petitioners was made as per the regularization order dated 09.06.2004 and as per the *Uttaranchal Jal Sansthan (Uttaranchal Lok Sewa Ayog Ke Kshetra Ke Bahar)(Samuh "Ga" Ke Padon Par) Dainik Vetan Niyuktiyon Ka Viniyamitikan Viniyam, 2003* (hereinafter referred to as Regulations, 2003) and as per Regulation 7(1) and 8(2), they are not entitled for seniority w.e.f. 1996. In the seniority list dated 06.07.2017, private respondents were again wrongly and

illegally placed above the petitioners. Petitioners have also quoted a similar case of Anil Kumar Sharma of Jal Sansthan in whose case, on the orders of this Tribunal dated 19.05.2004, the Government of Uttarakhand vide letter No. 2452 dated 18.09.2004 has given the benefit of seniority to Sri Anil Kumar Sharma from the date of his initial appointment, though his services were extended from time to time on quarter-yearly basis for a period of one and a half years. They have also quoted the cases of Uttaranchal Van Vikas Nigam, Uttarakhand Peyjal Sansthan Vikas Nigam evam Nirman Nigam, Mussoorie Dehradun Development Authority (MDDA) and Rajasva Anubhag-2 where the government has extended the benefits of seniority to the similarly placed employees from the date of their initial appointment on daily-wages basis, SANHAT VETAN (consolidated pay) etc.

6. Petitioners have also contended that Uttarakhand Jal Sansthan comes under the definition of Industry and as per the nature and duties of the Junior Engineer and the Assistant Engineer, they come under the definition of workmen. Industrial Establishment and provisions of Industrial Employment Standing Orders are applicable in their case according to which, the petitioners are entitled to be classified as permanent after completion of one year of service and as such their entire length of service has to be counted for the purpose of service benefits including seniority. Under the scheme of Payment of Gratuity Act, the entire service of the petitioners is to be counted for the purpose of gratuity, therefore, for the purpose of other service benefits, they are entitled for seniority by counting their entire length of service. The Rules of Regularization have already been interpreted by the Hon'ble Apex Court and the Hon'ble High Court who have held that the appointment by way of direct recruitment, will not be made until the persons appointed as *ad-hoc* or any other capacity, are regularized and in any event if by way of direct recruitment, any person is placed above to such person before their regularization, they cannot get seniority as per the Scheme of the Regularization Rules.

7. Petitioners have further contended that according to the judgment of the Hon'ble Supreme Court as well as Hon'ble High Courts, work-charged service is counted for the purpose of pensionary benefits, the regularization of the petitioners has to relate back to their initial date of induction whether work-charged or otherwise. The term used as work charge in their case is misnomer because the post and work against which they were inducted in service are for permanent and regular work and for a regular establishment. Their salary has been paid from the department under the salary head and not against any contingency fund. The State of U.P. *vide* G.O. dated 01.01.2000 has already abolished the work charge establishment in Irrigation Department and, therefore, as a necessary corollary, the work charge establishment has lost its significance in Pey Jal Sansthan. Therefore, petitioners cannot be treated as work-charge employees after 01.01.2000.

8. The petitioners have also contended that the condition imposed in the Regularization Rules, to treat seniority of the petitioners from the date of regularization is also arbitrary because the regularization cannot be termed as fresh appointment and has to relate back to the original date of appointment. The appointment of the petitioners as work-charge was made by the competent authority who is entitled to make such appointments and the appointment as daily-wager is mere camouflage and the only law regarding classification of worker is Industrial Employment Standing Orders made under Industrial Employment Standing Act.

9. The petitioners have further contended that the principal ground taken in the impugned order dated 17.09.2018 for rejection of the representation of the petitioners is the provision of Regulation 7 of Regulations, 2003 and Seniority Rules, 2002. The official respondents have heavily relied upon the word 'Substantive appointment' and treated the services of the petitioners as non-substantive prior to the regularization and rejected their claim. Respondent No. 1 has completely

ignored the provisions of law highlighted by the petitioners in their representations and confined the reasoning only to the Rules even without considering the nature of appointment of the petitioners which is permanent, substantive and regular. Apart from this, the respondents have not considered even the language of the Rule which itself indicates that even no direct appointment can be permissible before regularizing the existing ad-hoc employees. According to the petitioners, the act of the respondents is illegal, arbitrary and irrational, discriminatory, malafide and against the principles of natural justice and violative of Article 14 and 16 of the Constitution of India.

10. Learned Counsel for the petitioners has also cited the following rulings in support of their contentions:

- i. Secretary, Minor Irrigation Department & R.E.S. vs. Narendra Kumar Tripathi, 2015, SC 308
- ii. V. Sukumaran vs. State of Kerala and another, Civil Appeal No. 3984 of 2010.
- iii. WPSS No. 1142/2016, Bhrampal Singh vs State
- iv. WPSS No. 2622 of 2017, Gajendra Kr. Kapil
- v. WPSS No. 3669 of 2018, Vejendar Pal Dwivedi.
- vi. Narendra Chandra and others vs. Union of India and orders, 1986, AIR 638 SCR(1) 211
- vii. Santosh Kumar vs. State of Andhra Pradesh & others, Civil Appeal 4917 of 2000.
- viii. Dr. Nim vs. Union of India, 1967 AIR 1301, 1967 SCR (2) 325.
- ix. Maharaj Krishan Bhatt & others vs. State of J&K & others, Civil Appeal Nos. 8481-8482.
- x. Delhi Water Supply and Sewage Disposal Committee & others vs. K.Kashyap & others, 1988 Supreme SC 675.
- xi. M.K.Shanmugam & others vs. Union of India & others
- xii. Keshav Dev & Anr. Vs. State of U.P. & others.

11. The contentions of the respondents are as follows:

The main grievances of the petitioners raised in the instant petition pertains to seniority list dated 06.07.2017, and quashing the

same has been sought in 'Relief'. The same seniority list has already been quashed *vide* order dated 25.03.2019, passed by this Tribunal in Claim Petition No. 42/DB/2018, K.C.Peinuly vs. State of Uttarakhand & others, and the order has further been confirmed *vide* order dated 28.07.2020, passed in the same petition after the same matter having been remitted to this Hon'ble Tribunal by Hon'ble High Court of Uttarakhand. Learned Counsel for the respondent No.2 also produced the copy of the Office Memorandum dated 12.02.2021 issued by the Government in compliance of the order dated 28.07.2020 of this Tribunal issuing the final seniority list of Assistant Engineers of the Uttarakhand Jal Sansthan. Therefore, present claim petition has become infructuous.

Respondents have further contended that the prayer of the petitioners for counting their entire service from the initial dates of appointment made between 1988 to 1991, is to include the period of so-called service done in the undivided State of U.P. for the purpose of determination of seniority, while as per law, this Tribunal is not competent to adjudicate upon the affairs of the State of U.P. and the instant petition is not maintainable for want of jurisdiction. A declaration regarding jurisdiction has already been made by this Hon'ble Tribunal dated 27.03.2018, in Claim Petition No. 41/DB/2015, Virendra Singh vs. State of Uttarakhand. Even if it is argued that this Tribunal can adjudicate on the affairs/happening in the State of U.P., the same State has to be impleaded as necessary party to know their stand on the specific plea made by the petitioners that they had been appointed in the State of U.P. *w.e.f.* 1988 to 1991. This is most necessary to implead the State of U.P. because no appointment orders issued to the petitioners in the State of U.P. have been filed. Hence, the instant petition is not maintainable for non-joinder of necessary party.

It has been argued that the instant petition is hopelessly time barred as the seniority is being claimed in the year of 2019 but from the initial date of appointment which are stated to have been made during

1988-1991. As per law, the seniority list has to be constituted just after the appointment made in any cadre of service, the actual cause (of grievance) had arisen during so called period 1988-1991, but no grievance had ever been made by the petitioners during the same period or immediately after the said period in the State of U.P. It is also brought in the notice of this Hon'ble Tribunal that the petitioners have admitted that they had been working on daily wages in Garhwal Jal Sansthan of erstwhile State of U.P. it is important to note that a seniority list of Junior Engineers working in Garhwal Jal Sansthan and Kumaun Jal Sansthan was prepared and published *vide* order No. *Parv.Cell/17/85-Jye-Ni.-Ja.Ka./94*, dated 31.03.1996, in erstwhile State of U.P. but the names of the petitioners were not included in the same seniority list. Yet petitioners never raised any grievance for non-induction of their names in the said seniority list. Now raising of any grievance after nearly 24 years in 2019 is quite time barred and this instant petition is liable to be dismissed. By filing of representations, the date of actual grievance is not extended nor the direction given by Hon'ble Tribunal to consider the representation which relates to stale or dead grievance extends the date of occurrence of actual grievance and does not give rise to fresh cause of action. Order & judgment dated 23.08.2013, made by Hon'ble Supreme Court of India in State of Uttaranchal & another vs. Shri Shiv Charan Singh Bhandari & others, 2013(2) UD, 40, has been cited in this regard.

Respondents have contended that no letters/orders of appointment in any establishment or in the department have been filed by the petitioners except stating that they were appointed on daily-wager basis in their averments. The petitioners were never appointed as per the Rules which were prevailing since 1965 and they were further modified by the Rules of 1986 except their engagement as per the need of the hour. After their regularization *vide* order dated 17.08.2004, the seniority list of the petitioners on the basis of their dates of birth was rightly fixed because they were all regularized/appointed on one and the same date i.e. 17.08.2004.

Learned counsel for the respondent No. 2 has further argued that the seniority of an employee is a statutory right and not a fundamental right, in fact, it is a right *in rem* and a shared right as per statutory provisions. The petitioners have not mentioned any statutory provision under which they are claiming seniority since the initial date of so called appointment but without mentioning the actual date of so called appointment as daily wager. Even concerned appointment letters/orders have not been filed with the petition and in absence of appointment order/letter it is not possible to know whether they were appointed as per rules. As per law, an appointment according to Rules is a condition precedent to count seniority. It is to be seen specifically that in the erstwhile State of U.P., 'Palika and Jal Sansthan Water works Engineering (Centralized) Service Rules, 1996' were prevailing and during the same period, the petitioners were working in the State of U.P. The same Rules, 1996 have been adopted by the State of Uttarakhand vide notification dated 07.11.2002. According to Rules, 1996, the recruitment on the post of Junior Engineers has to be made through Public Service Commission vide Rule 17 of the above Rules, 1996 but the petitioners were never appointed on the post of Junior Engineer through Public Service Commission. Similarly, the seniority has to be determined according to Rule 26 of the Rules, 1996 by the date of substantive appointment. The petitioners have already admitted *vide* Annexure: 05 and Annexure: 06 filed with the petition that they were regularized *w.e.f.* 17.08.2004 and their seniority shall be determined *w.e.f.* date of substantive appointment which has been declared as 17.08.2004. It is most astonishing that the petitioners have never challenged before any forum the said orders of Regularization (Annexure No. 5) nor the order (Annexure No. 6) by which their seniority were fixed in the year 2008. Now after lapse of after 16 years they have approached this Tribunal with regard to fixing of their seniority afresh. Such claim being badly stale cannot be entertained by this Tribunal. It has been further emphasized that when Rules are operating in fixing the seniority, the

concept of length of service is not applicable in determining the seniority as it has been held by Hon'ble Supreme Court in Desoola Rama Rao and another vs. State of Andhra Pradesh and others, AIR 1988 SC 857. Similarly, as per law, regularization of casual worker should be prospective and not retrospective as the chances of their upsetting the seniority cannot be over looked as it has been held by Hon'ble Supreme Court of India in Civil Appeal No. 5666 of 2006, Union of India and others vs. Sheela Rani *vide* order dated 08.12.2006.

The respondents have also stated that the facts of the case of Sri Anil Kumar Sharma, Junior Engineer are different from the case of the petitioners inasmuch as the name of Sri Anil Kumar Sharma, Junior Engineer was in the alleged seniority list of U.P. while the names of the petitioners were not there.

Respondents have further argued that the impugned seniority list of Assistant Engineers dated 06.07.2017 is based upon the seniority list of Junior Engineers dated 17.01.2013. But petitioners have not challenged the said seniority list of Junior Engineers before any forum. The impugned seniority list dated 06.07.2017 is based on this seniority list of Junior Engineers dated 17.01.2013. Without challenging the foundation, superstructure cannot be challenged. In support of this argument, order and judgment passed by Hon'ble Supreme Court in P.C. Menon and others vs. A. Balakrishnan and others, AIR 1977 SC 1720 has been cited.

Regarding reliance of the petitioners on the provisions of Orders/Acts relating to Industrial Employment, learned Counsel for the respondent No. 2 has argued that the petitioners cannot be allowed to stand on two stools at the same time. The U.P. Public Services Tribunal Act, 1976 is a complete Code with its prescribed Rules. The claims made on the basis of Industrial Acts are liable to be rejected.

12. In the Rejoinder Affidavits filed on behalf of the petitioners, it has been emphasized that prior to the creation of the State of Uttarakhand, Uttarakhand Jal Sansthan was not in existence. The petitioners were working on dailywages and consolidated pay during the period of undivided State of U.P. in Garhwal Jal Sansthan and after reorganization of the State, Garhwal Jal Sansthan and Kumaun Jal Sansthan merged into Uttarakhand Jal Sansthan. The impugned orders have been passed by Respondent No. 1 hence, State of U.P. is not a necessary or proper party in the petition and this Tribunal has jurisdiction to entertain the case against the present respondents. It is wrong to say that petitioners have not mentioned above their initial dates of appointment. All the service records of the petitioners are in the possession of the answering respondents and in the impugned order dated 17.09.2018, Respondent No. 1 has also not questioned the initial appointments of the petitioners. In Annexure No. 3 of the claim petition, petitioners have mentioned their initial dates of appointments and periods during which they were engaged in the department on daily-wages and consolidated pay. When petitioners were initially appointed, they were fully eligible and entitled, having all the requisite qualifications for the post under the old rules and at that time, General Manager (G.M.) was the Appointing Authority of the post, however their appointment was dailywage instead of regular appointment. Since the date of first appointment, the petitioners are continuously and regularly working without any break under the respondents. Thus, the appointments of the petitioners cannot be called as *ad-hoc*.

13. A perusal of the impugned order dated 17.09.2018 reveals that the respondent No. 1 has held the fixation of seniority on the basis of the date of substantive appointment/regularization of the petitioners to be as per the Rules and disposed of the representation of the petitioners dated 23.05.2017 accordingly. *Vide* this representation, the petitioners had sought the benefit of seniority to be given to them firstly from the dates of initial employment as Junior Engineer on daily-wage

basis, and if not that, secondly, to be given from the date of grant of consolidated salary (*Sanhat Vetan*) w.e.f. 01.09.1996. The petitioners have quoted some case law and the examples of other Government organizations as mentioned in the claim petition in support of their demand. Respondent No. 1 in the impugned order dated 17.09.2018 has placed reliance on Regulation 7 of the Regulations, 2003, according to which, any person appointed under these Regulations shall be entitled to seniority from the date of appointment under these Regulations and in all matters, shall be placed below persons appointed earlier under the relevant service rules or according to regular prescribed process. He has also quoted Rule 26 of the relevant Service Rules of 1996 adopted by Uttarakhand *vide* Notification dated 07.11.2002, according to which, the seniority shall be determined from the date of substantive appointment. He has further referred to Rule 24(1) of the Uttarakhand Jal Sansthan Engineering Service Rules, 2011, according to which, the seniority shall be determined according to the Uttaranchal Government Servant Seniority Rules, 2002. Rule 4 (h) of the Seniority Rules of 2002, defines “substantive appointment” to be an appointment, not being an *ad hoc* appointment, on a post in the cadre of the service, made after selection in accordance with the service rules relating to that service. In the impugned order, Respondent No. 1 has observed that final seniority list of Assistant Engineers of Uttarakhand Jal Sansthan dated 06.07.2017 has been issued on the basis of these principles and Rules in which petitioners’ names are at seniority nos. 95 to 102. Respondent No. 1 has held in the impugned order that the seniority of the petitioners has been decided on the basis of date of their substantive appointment/regularization i.e. 17.08.2004 which is as per Rules. The Respondent No. 1 has not gone into the case law and examples of other Government Organizations mentioned in the representation dated 23.05.2017 of the petitioners.

14. In the Govt. Orders of regularization dated 17.08.2004 of the petitioners and corresponding orders of the Uttaranchal Jal Sansthan

dated 24.08.2004, it was provided that the seniority of the petitioners shall be fixed separately. Further, *vide* Office Memorandum dated 02.08.2008 of the Uttarakhand Jal Sansthan, their date of substantive appointment was deemed to be the date of regularization i.e. 17.08.2004 and seniority was decided from this date and their inter-se seniority amongst themselves was decided on the basis of their dates of birth. This fixation of seniority has been upheld in the impugned order dated 17.09.2018. Claim Petition against this order has been filed on 27.04.2019, which is filed within time. Though, the impugned seniority list dated 06.07.2017 has been set aside and, complying with the orders of this Tribunal passed in other claim petitions, respondents have issued a fresh seniority list *vide* G.O. dated 12.02.2021, the issue of counting the seniority of the petitioners from earlier dates deserves to be adjudicated upon by this Tribunal. The same calls for thorough consideration of the case law and averments cited by both the sides.

15. Reliance is placed on behalf of the petitioners, on the decision rendered by Hon'ble Apex Court in *Secretary, Minor Irrigation Department and RES vs. Narendra Kumar Tripathi (2015) 11 SCC 80*. A decision of *Rudra Kumar Sain & Ors vs. Union of India & Ors, 2000 (8) SCC 25* has been quoted in the same, para 19 of which reads as under:

19. The meaning to be assigned to these terms while interpreting provisions of a service rule will depend on the provisions of that rule and the context in and the purpose for which the expressions are used. The meaning of any of these terms in the context of computation of inter se seniority of officers holding cadre post will depend on the facts and circumstances in which the appointment came to be made. For that purpose it will be necessary to look into the purpose for which the post was created and the nature of the appointment of the officer as stated in the appointment order. If the appointment order itself indicates that the post is created to meet a particular temporary contingency and for a period specified in the order, then the appointment to such a post can be aptly described as "ad hoc" or "stopgap". If a post is created to meet a situation which has suddenly arisen on account of happening of some event of a temporary nature then the appointment of such a post can aptly be described as "fortuitous"

in nature. If an appointment is made to meet the contingency arising on account of delay in completing the process of regular recruitment to the post due to any reason and it is not possible to leave the post vacant till then, and to meet this contingency an appointment is made then it can appropriately be called [pic]as a "stopgap" arrangement and appointment in the post as "ad hoc" appointment. It is not possible to lay down any strait-jacket formula nor give an exhaustive list of circumstances and situation in which such an appointment (ad hoc, fortuitous or stopgap) can be made. As such, this discussion is not intended to enumerate the circumstances or situations in which appointments of officers can be said to come within the scope of any of these terms. It is only to indicate how the matter should be approached while dealing with the questions of inter se seniority of officers in the cadre."

It was held in Minor Irrigation and RES case (*supra*) that:

"18. 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."

The facts of present claim petition are distinguishable from the decision of Secretary, Minor Irrigation and RES (*supra*), for the following reasons:

(i) In the decision rendered by Hon'ble Apex Court, the department has been making direct recruitment after due selection and by applying the 1979 Rules, which rules were extended from time to time to subsequent recruitments and their services were regularized. It is not so in the present case. Whereas in the former, direct recruitments were made after due selection and by applying the 1979 Rules, the recruitment of the petitioners was *de-hors* such Rules. It was not after due selection.

(ii) 1979 Rules, referred to above, provided that *ad hoc* appointments were to be regularized and the seniority counted from the date of appointment. It is not so in the case of present petitioners. Their recruitment was not after due selection and there is no Rule in their favour that their seniority would be counted from the date of their appointment.

(iii) Whereas, in *Minor Irrigation and RES*, the appointments were made after due selection, with vacancy, with qualification and as per Rules, it was not so in the instant case. The appointment of present claim petitioners was *de-hors* Rules, as a sort of stop-gap arrangement.

(iv) Whereas the Rules in *Minor Irrigation case* had the effect of creating the appointment as regular appointment from initial date of appointment, it is not so in the instant case. Hon'ble Apex Court, in *Minor Irrigation case* held that the principle laid down in *K.C.Joshi*, was not applicable because of the reasons given in para 18 of such decision. The facts, in the instant case are different and therefore, *Minor Irrigation case* shall not apply.

(v) In *Minor Irrigation case*, the service rendered was neither fortuitous nor against the Rules nor by way of stop-gap arrangement. Here the position is entirely different. In the case of the petitioners, in the absence of any Rules, as were available in Minor Irrigation and RES case, their past services cannot be counted from the date they were recruited in the absence of any Rules.

(vi) Petitioners cannot be allowed the benefit of past services in the absence of any Rules. The Hon'ble Supreme Court had given the benefit of past service to the petitioners of Minor Irrigation case on the basis of parity with other incumbents on the strength of 1979 Rules, in which direct recruitments were made after due selection and Rules provided that *ad-hoc* appointments have to be regularized and seniority be counted from the date of appointment.

(vii) Whereas in Minor Irrigation case, the petitioner could not be deprived of the past service rendered by him till the date of regularization on the strength of 1979 Rules, the petitioners, in the instant case, cannot be allowed the benefit of past service in the absence of such Service Rules.

16. In the decision in Civil Appeal No. 3984/2010, D. Sukumaran vs. State of Kerala and others, decided by Hon'ble Apex Court on 26.08.2020 the benefit of the service rendered as a Casual Labour Roll (CLR) workers in different projects was counted for determining the pensionary benefit at par with other CLR and the pension was accordingly directed to be calculated. The appellant, D. Sukumaran was claiming his entitlement of pension despite having worked with government departments in various capacities for about 32 years. Sukumaran had relied upon a slew of Govt. Orders issued from time to time. The background of Sukumaran's case is entirely different from the facts of present petitioners and, therefore, ratio of decision of Sukumaran (*supra*) is not applicable to present petitioners.

17. Reliance has also been placed on the judgment referred by Hon'ble High Court of Uttarakhand in WPSS No. 1142/2016 and connected writ petitions. In the said decision, petitioner of the leading case was appointed on daily-wage basis w.e.f. 01.12.1980 and he was conferred the work charge status on 24.04.1997. His services were regularized on 21.08.2003. The petitioner worked in work charge capacity in Irrigation Department, in which, there is Irrigation Manual, Regulations 667, 668 and 669 of which were deleted in respect of Irrigation Department and PWD, as a consequence of which, the petitioners were deemed to have been appointed on regular/permanent basis. The petitioners, in the instant case, are not governed by the Irrigation Manual. They belong to Uttarakhand Jal Sansthan. In arriving at such a decision in favour of the petitioners, the Hon'ble High Court relied upon various decisions.

18. Para 50 of the judgment delivered by Hon'ble High Court of Uttarakhand, referred to above, reads as below:

"50. Accordingly, all the writ petitions are allowed. Orders, under challenge therein, are quashed and set aside. Regulation 370(ii) of the Civil Service Regulations is struck down being ultra vires to Articles 14 and 16 of the Constitution of India. The respondents are directed to count the entire service of the petitioners/workmen rendered in work-charge capacity followed by their regularization for the purpose of pensionary and other retiral benefits including gratuity and thereafter to release their pension and other retiral benefits including gratuity within a period of three months from today."

19. The writ petitioners, as referred above, were governed by the Irrigation Manual. Here the claim petitioners are governed by different rules. Writ petitioners worked as workmen in work charge capacity followed by their regularization for the purpose of pensionary and other retiral benefits including gratuity and not seniority and promotion. Here the petitioners did not work as such. Regulation 370 of the Civil Service Regulations dealt with continuous/temporary or

officiating service under the Government of U.P. without interruption followed by confirmation in the same or any other posts.

20. In WPSS 3669/2018, the decision rendered by Hon'ble High Court on 29.07.2019 was based on the decision of Hon'ble Apex Court rendered in Minor Irrigation vs. Narendra Kumar Tripathi, (2015) 11 SCC 80. We have already noted above that the facts of Minor Irrigation case (*supra*) are distinguishable from the facts of present claim petition.

21. In WPSS No. 2622/2017, the decision rendered by Hon'ble High Court of Uttarakhand, petitioners were work-charge employees w.e.f. 01.09.1996 and subsequently their services were regularized w.e.f. 01.11.2003. The facts of the present claim petitioners are, on material prepositions, at variance from the facts of the case rendered by Hon'ble High Court on 02.07.2020 in MCC No. 38/2018 filed in WPSS No. 2622/2017. The petitioners, in the present claim petition have sought quashing the seniority list and for granting the benefits of their working in respondent department as daily-wager.

22. We have been informed by the respondents that a fresh seniority list has been issued by the respondent department as per direction of this Tribunal in K.C. Peinuly's case. On 28.07.2020, this Tribunal had rendered a judgment in Claim Petition No. 42/DB/2018, K.C.Peinuly vs. State & others, which was put to challenge by the respondents before Hon'ble High Court of Uttarakhand at Nainital. It is informed by learned Counsel for the respondents that since there was no interim stay on the judgment passed by this Tribunal, therefore, the respondent department issued a final seniority list. In such view of the matter, relief No. 1, as sought in the present claim petition, it appears, has been rendered infructuous. The seniority list as prayed for in present claim petition has already been set aside by the respondent department by issuing a fresh seniority list on 12.02.2021. We record the statements of learned A.P.O. as also learned Counsel for the respondent No.2 and proceed further with the discussion on both the reliefs.

23. Petitioners have sought quashing the impugned order dated 17.09.2018 and seniority list dated 06.07.2017 to the extent it relates to *inter-se* seniority between the petitioners and private respondents. The second relief is as regards counting that part of service, which was rendered by the petitioners as daily-wager for the purpose of grant of pensionary benefits and other service benefits like seniority and promotion etc.

24. So far as the first relief is concerned, the respondent department has already drawn a seniority list, subsequent to *Peinuly's* judgment, on 12.02.2021. The judgment of this Tribunal in *Peinuly* has been put to challenge before Hon'ble High Court. In other words, the same is under consideration of the Hon'ble Court. Since no interim stay was granted by the Hon'ble Court, therefore, respondent department drew a fresh seniority list on 12.02.2021. The first relief in the claim petition has, therefore, become infructuous.

25. Petitioners were also engaged as daily-wager in Garhwal Jal Sansthan before their regular appointment as Assistant Engineers in Uttarakhand Jal Sansthan. A daily-wager is never appointed. He is engaged for a particular purpose. It is not an 'appointment'. Everything is governed by the Service Rules made in this behalf. The case laws cited on behalf of the petitioners are on different footing. There, they were governed by different service Rules. Here, there are no Rules in favour of the petitioners to suggest that their engagement as daily-wager should be counted for the purpose of seniority and other service related benefits, that too, after a long period. Garhwal Jal Sansthan existed in erstwhile State of U.P. After appointed day, i.e., 09.11.2000, Garhwal Jal Sansthan and Kumoun Jal Sansthan were merged into Uttarakhand Jal Sansthan. The petitioners were regularized in Uttarakhand Jal Sansthan w.e.f. 17.08.2004. There is no service Rule to suggest that their engagement with duration of their engagement as daily-wager should be prefixed with their substantive appointment. In normal course, this

Tribunal would have closed the discussion here and proceeded with operating portion, but since other legal issues have also been raised, therefore, the Tribunal proposes to discuss those issues also, although, in brief.

26. Petitioners pray for counting their engagement as daily-wager from 1988 to 1991 till the date of their regularization. The State of Uttarakhand came into being only on 09.11.2000. In view of the decisions of Hon'ble High Court in *State of Uttarakhand and others vs. Umakant Joshi*, 2012 (1) UD 583 as also in Writ Petition No. (S/B) No. 102 of 2017, *Dr. Kamaljeet Singh and another versus State of Uttarakhand and others*, Uttarakhand Public Services Tribunal would appear to be exceeding its jurisdiction, if certain orders were passed on the petitioners claims for the 'service' rendered by them in the erstwhile State of U.P.

27. As per *State of Uttarakhand and others vs. Shiv Charan Singh Bhandari* 2013 (2) UD 407, the relief appears to be barred by limitation.

28. In *Union of India and others vs. Sheela Rani*, 2007 (2) RST 55, a question of law, as to whether the service of casual worker can be regularized with retrospective effect, i.e., from the date of initial appointment, arose before Hon'ble Apex Court. Hon'ble Apex Court observed in para 9 and 10, as below:

"9. The law is well settled on this issue. In State of Haryana vs. Jasmer Singh, 1996(11) SCC 83, a three-judge Bench of this Court held that the regularization of daily-rated workmen who had completed a certain number of years of service is a policy matter to be decided by the State. This Court held that the respondents who are employed on daily wages cannot be treated on a par with persons in regular service of the State holding similar post. Daily-rated workers are not required to possess the qualifications prescribed for regular work nor do they have to fulfill the requirement relating to age at the time of recruitment. They cannot, therefore, be equated with the regular workmen for the purposes of their wages nor can they claim the minimum wage or regular pay scale of the regularly employed."

10. In Registrar General of India & Anr. Vs. V. Thippa Setty & Ors. (supra), the Tribunal's direction was to regularize the respondents w.e.f. the date of promulgation of the recruitment rules or from the date of their appointment depending on the seniority list. In pursuance of the said direction, on the new recruitment rules being promulgated on 11.5.1985, the regularization was given effect from that date. However, in the subsequent order passed by the Tribunal on 19.2.1993, the Tribunal has directed that they should be treated as having been conferred regular status w.e.f. 5.2.1981 i.e. the date of their entry into service as Investigators. This Court held that the employees had entered as ad hoc appointees and the question was whether they should be regularized in service since they had worked as ad hoc employees for a sufficient long time. If the ad hoc service is regularized from the back date in this manner, it will disturb the seniority of regularly appointed employees in the cadre and, therefore, ordinarily the regularization must take effect prospectively and not retrospectively. This Court ordered that care must be taken to see that regularization do not upset the seniorities of regular appointees. Whether they qualify in a given case or not is not relevant but what is relevant is that regularization should be prospective and not retrospective as the chances of their upsetting the seniorities cannot be overlooked."

29. Further, State of U.P., also appears to be a necessary party inasmuch as the petitioners are claiming to have been appointed in the duration of 1988 to 1991.

30. The Seniority list of Junior Engineers working in Garhwal Jal Sansthan and Kumoun Jal Sansthan was prepared and published way back on 31.03.1996 and petitioners' name was not included in such seniority list. Petitioners never raised any grievance for non-inclusion of their names in the seniority list. The grievance is being raised after nearly 24 years.

31. Limitation is not extended by filing representations on subsequent dates in view of the decision rendered by Hon'ble Apex Court in Shiv Charan Singh Bhandari's case (*supra*).

32. The seniority of an employee is a shared right as per statutory provisions. There is no statutory provision under which petitioners are claiming seniority since the day of their engagement as daily-wagers. No 'appointment-letter' has been placed on record. 'Appointment',

according to Rules, is a condition precedent for counting the seniority. "Palika and Jal Sansthan Water works Engineering (Centralized) Service Rules, 1996" were prevailing when the petitioners were engaged as daily-wagers. Such Rules are applicable to the State of Uttarakhand by virtue of the U.P. Re-organization Act, 2000. According to 1996 Rules, the recruitment on the post of Junior Engineers has to be made through Public Service Commission *vide* Rule 17 of the Rules of 1996. Petitioners were never appointed on such posts.

33. As per Rule 26 of Rules of 1996, the seniority has to be determined from the date of substantive appointment. The petitioners have admitted in Annexure A-5 and Annexure-A6 that they were regularized on 17.08.2004 (Annexure: A5) and their seniority shall be counted *w.e.f.* the date of substantive appointment, which has been declared as 17.08.2004 (Annexure: A6). The seniority of the petitioners was fixed in the year 2008, the same was never put to challenge. When Rules are operating in fixing the seniority, the concept of length of service is not applicable in determining the seniority, as has been held by Hon'ble Apex Court in *Desoola Rama Rao & Anr vs State of Andhra Pradesh & Ors*, AIR 1988 SC, 857. In para 5 of the *Desoola Rama Rao (supra)*, Hon'ble Apex Court has observed that:

"The law relating to inter-se seniority in a cadre is well-settled. If there be a rule indicating the manner in which such seniority has to be fixed, that is binding. In the absence of such a rule, length of service is the basis for fixing inter-se seniority. Thus, where it was not in dispute that respondents have put in longer service than the appellants in the post of Assistant Engineer, the order of State Govt. that the appellants would rank below the respondents in the cadre and the promotional benefit would be given to them after the claim of the respondents has been duly considered, would be proper."

[Emphasis supplied]

34. On merits, the claim petition, in respect of relief No. 1 has become infructuous, inasmuch as, fresh seniority list has been drawn by the respondent department on 12.02.2021, as per the decision

rendered by this Tribunal in Claim Petition No. 42/DB/2018, *K.C.Peinuly vs. State of Uttarakhand & others*. Such decision was put to challenge before Hon'ble High Court, where the same is pending adjudication. The duration for which petitioners were engaged as daily-wagers, cannot be counted for the purpose of seniority and related service benefits.

35. The claim petition is devoid of merits and is, therefore, dismissed.

36. In the circumstances, no order as to costs.

(RAJEEV GUPTA)
VICE CHAIRMAN (A)

(JUSTICE U.C.DHYANI)
CHAIRMAN

DATE: MARCH 31, 2021
DEHRADUN

KNP