

**UTTARAKHAND PUBLIC SERVICES TRIBUNAL
DEHRADUN BENCH AT NAINITAL**

Claim Petition No. **5/N.B./2011**

1. Virendra Kumar Sharma, son of Sri Kishore Lal Sharma, son of K.L. Sharma, R/o Hiranagar, Haldwani.
2. Pyare Lal, son of Sri Ghan Ram presently posted as Patwari, Tehsil Ram Nagar, Nainital.
3. Gur Bhajan Singh, S/o Sri Chhoher Singh, resident of J. K. Puram, Haldwani.
4. Sri Ram, aged son of Sri Bhawan Ram presently posted as Revenue Inspector, Tehsil Haldwani, Nainital.
5. Gumani Ram, son of Shri Ram Prasad, R/o Village Pindari, Post Office Sitarganj, District Udham Singh Nagar.

..... Petitioners

Versus

1. State of Uttarakhand, through its Secretary, Revenue Civil Secretariat, Dehradun.
2. Chief Revenue Commissioner, Uttarakhand, Dehradun.
3. Commissioner, Kumaon Region, Nainital.
4. District Magistrate, Nainital.
5. District Magistrate, Udham Singh Nagar.

..... Respondents

Coram: **Hon'ble Justice J. C. S. Rawat**
..... **Chairman**
&
Hon'ble U. D. Chaube
..... **Member (A)**

Present: Sri Alok Dalakoti, Advocate, in brief of
Sri A. K. Joshi, Advocate for the petitioner.
Sri V. P. Devrani, A.P.O. for the respondents.

JUDGMENT

DATED: - **03-07-2013**

Justice J.C.S. Rawat (Oral)

This claim petition has been filed for seeking the following relief:-

“That the petitioners most respectfully prayed that this Hon'ble Tribunal may graciously be pleased to quash the impugned order dated 16-02-2011 passed by respondent no.4, and direct the respondents to count the service as untrained lekhpal/patwari for the purpose of seniority ie from the date of initial appointment and to pay salary for the period between date of joining after completion of training till the date of posting.”

2. It is admitted case to the parties that the petitioner nos. 1 and 2 were appointed as untrained Lekhpal on 12-4-1980, the petitioner nos. 3, 4 and 5 were appointed as untrained Lekhpal on 3-5-1979, 25-4-1980 and 12-4-1980 respectively. Untrained Lekhpals were appointed due to non-availability of the trained Lekhpal in the State of Uttar Pradesh. Thereafter, the State Government issued certain Government Orders in the year 1979, 1980 and 1983 for regularization of untrained Lekhpal serving in the Revenue Department and by means of this Government Order, it was

provided therein that untrained Lekhpal who had been working till 1980 could be sent to Lekhpal training and thereafter they would be posted in the vacant posts in the State; the petitioners who had been serving the erstwhile State of U.P. were sent for training in the year 1983 pursuant to the order of the State of U.P. and at the same time they were given place of posting; the petitioners had to join after completing their training. Pursuant to the said order and after completing training, the petitioner nos. 1, 2, 3, 4 & 5 were posted and they joined in their place of posting on 1-4-1986, 4-11-1985, 11-10-1985, 7-9-1985 and 17-9-1985. Pursuant to the above order they served in the erstwhile State of U.P. The State of U.P. was reorganized on 9-11-2000 and thereafter a new State, the State of Uttaranchal, (later on known as Uttarakhand) was carved-out from the State of U.P. The petitioners were posted at the time of reorganization in the State of Uttarakhand, so the State of Uttarakhand on 30-05-2001 prepared a seniority list (Annexure 8 to this claim petition) in which they have been shown at serial nos. 29, 31, 32, 33, and 36 and seniority has been given according to the date of their posting after completion of their training as ordered by the Government.

3. The petitioners feeling aggrieved by this order made a representation to the Government alleging therein that the petitioners had been appointed temporarily on ad-hoc basis before 1980 and their seniority should have been reckoned from the date of their initial appointment. It was further alleged that in between 1975 to 1978 Lekhpal Training School had not been functioning in the State of U.P. and due to the said contingency the ad-hoc appointments were made by the State Government against the vacant vacancies and the petitioners are entitled to get the seniority from the date of their initial appointment. The above averment has been reiterated in the claim petition also.

4. In the written statement as well as in the counter affidavit, the respondents have pleaded that the petitioners were not qualified to be appointed as Lekhpal because they have not completed the training as required under Rule 5 & 6 of Lekhpal Service Rules, 1958 (hereinafter referred as “the Lekhpal Rules, 1958”). The petitioners were appointed on ad-hoc basis and seniority of the petitioners would reckon from the date when they had been regularized by the Government and not from the date of their initial appointment. The respondents have supported the seniority list prepared by the respondents. It was further alleged in the written statement that persons who had been appointed after getting training and had been appointed prior to the regularization of the petitioners had been placed senior to the petitioners. All the petitioners had been placed in the seniority list in accordance with Rules. Ultimately, the respondents have pleaded that petition may be dismissed with cost.

5. We have heard learned counsel for the parties and perused the record.

6. Learned counsel for the petitioner contended that the petitioners were appointed on different dates in the year 1979 to 1980. They were appointed against the substantive vacancies of Lekhpals and they had worked as Lekhpal in the State, as such they are entitled to get the benefit of seniority from the date when they were initially appointed by the State Government. It was further contended that since 1975-1978 the Lekhpal Training School had not been functioning in the erstwhile State of U.P. and due to non-availability of the said school the petitioners had been appointed against the substantive vacancies of Lekhpals as untrained Lekhpals. So they are entitled to get the benefit of above period for which

they remain ad-hoc appointees in the Department for counting the seniority and their seniority would reckon from the date of their initial appointments.

7. Learned counsel for the State Mr. V. P. Devrani, A.P.O. contended that an appointment on purely temporary ad-hoc basis does not create a right to remain on the post and as such their appointment can be terminated at any time and it is settled law that the period of ad-hoc would not be counted towards the seniority of the person who had been regularized on later date. He further contended that appointment letters as well as other documents which relate to the appointments of the petitioners clearly indicate that the appointments of the petitioners were purely temporary on ad-hoc basis and it is also alleged that Government order issued by Government in the year 1983 clearly indicates that substantively appointed Lekhpal prior to the regularization of the petitioners would not be affected by any way after the regularization of the services of the petitioners.

8. Before going into arena of the discussion submitted by the respective parties, we would like to discuss the factual aspects of this case vis-à-vis Lekhpal Rules 1958. The petitioners had been appointed prior to 1980 as ad-hoc untrained Lekhpals. The petitioners have filed the documents Annexure A-1 & A-2 to this petition of the above effect. In the said documents, it is clearly mentioned at the last that appointment would be on ad-hoc basis and on totally temporary and can be terminated without any notice to the petitioners at any time. Perusal of the record of the petition clearly reveals that they had been appointed on the post of Lekhpal on ad-hoc basis. Rules- 5 & 6 of Lekhpal Service Rules, 1958 runs as follows:-

“5. Source of recruitment: - (1) Only such candidates as have obtained the Patwari or Lekhpal School Certificate and whose names have been brought on the list mentioned in Rule 6 shall be eligible for appointment to the service.

(2) Notwithstanding anything contained in sub-rules (1), persons who belong to the category mentioned in paragraph 2 (3) (d) of Revenue (B) Department G. O. No. 4434/B, dated April 27, 1953, and are working in a temporary or officiating capacity, with or without break in service, shall be deemed eligible for appointment to the service.

(3) The ex-patwaris who had a good record of service and fulfil other qualifications and conditions prescribed for appointment shall also be eligible for appointment to the service.

(4) Ex-patwaris shall be treated as new candidates and shall not get the benefit of their past service in any matter.

(5) Ex-patwaris who have already been absorbed in the service shall be deemed to have been appointed under these rules.

6. Procedure for recruitment: - (1) For purposes of recruitment, the Collector shall maintain in the following form a list of candidates who have passed the Patwari or Lekhpal School Examination :

1. Serial No., 2. Name of candidate with percentage and residence, 3. Date of birth, 4. Educational qualification, 5. year of passing the Patwari or Lekhpal School Examination, 6. Total No. of marks obtained in the Examination with Division, 7. Dates of officiating periods with remarks about work, 8. Remarks

(2) Necessary material for the maintenance of this list shall be supplied each year, as soon as examination results are out, by the Collector in whose district the Lekhpal School is located. The Collector may, subject to the

approval of the Director, add to the list so received the name of any other candidate who has passed the Patwari or Lekhpal School Examination.

(3). The names, in the list shall be arranged in order of seniority as determined by the year of examination. Seniority as between the candidates of the same year shall be judged on the basis of the aggregate marks obtained at the examination. Where the aggregate marks are equal, the seniority shall be determined on the basis of age.

(3-A) A district-wise list of ex-patwaris fulfilling the conditions laid down in sub-rule (3) of rule 5 shall be maintained by each Collector. The names in this list shall be arranged according to the length of service. If the length of service of two or more ex-patwaris is the same the names shall be arranged according to age.

Note :- If any list is already maintained in this behalf under executive orders of Government it shall be deemed to be maintained under this sub-rule.

(4). The lists referred to the examination and the Collector shall remove the names of-

- (a) Candidates who have received permanent appointment;
- (b) Other candidates for good and sufficient reasons to be recorded in writing;
- (c) Those candidates in the list prescribed in sub-rule (3) of rule 6 who have exceeded the maximum age-limit for appointment.

Thus, Rule 6 provides that the Lekhpals at the time of appointment must have qualified lekhpal training from the Lekhpal Training school recognized by the State.

Rule 18 runs as under:-

“18. Temporary vacancies :- (a) In temporary vacancies exceeding one month, candidates borne on the list maintained under paragraph 5 shall, as far as possible, be appointed in accordance with their seniority.

(b) In the case of vacancies not exceeding one month, or in vacancies exceeding one month for which a qualified candidate is not available, the Assistant Collector may appoint an unqualified candidate provided that he is satisfied that the candidate is otherwise suitable for the job.”

Rule 18 provides that temporary vacancies can be filled up made for one month or for more till the temporary vacancies exist.

Perusal of Rule 18 clearly indicates that it relates to temporary vacancies which exist for a short period and Rule 5 & 6 deals with appointment of the permanent vacancies. There are two types of vacancies in the service jurisprudence one is temporary vacancy for a short or long period and other may be permanent vacancy. Rule 18 clearly provides that such appointment would be made by appointing authority as provided under Rule 5 of the said Lekhpal Rules, 1958 from the list prepared by him. Now, it is clearly revealed that the petitioners had been appointed initially de hors the rules because they had not completed the lekhpal training Non Lekhpal Training school at the time of the initial appointments. To undergo a training in the training school prescribed by the Government is a condition precedent for the appointment of the Lekhpal under Lekhpal Rules, 1958. Thus, the petitioners had not such qualification at the time of the initial appointment as Lekhpal. Now, position emerges and it is also admitted to the parties that the petitioners had been appointed as ad-hoc appointees.

9. It is settled position of law that the appointment made against the purely temporary, ad-hoc and fortuitous basis does not entitle the holder of

post to be a member of such service and such ad-hoc appointee is not entitled the benefit of period of such ad-hoc services for the seniority.

10. The learned counsel for the petitioner relied upon the judgment of Hon'ble Apex Court in the case of **Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra & others (1990) 2 SCC 715**. Where it has been held that once an employee 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 and 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. It was further held that 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 regularization of his service in accordance with the rules, the period of officiating service will be counted.

11. The learned counsel for the petitioner also relied upon the judgment of Hon'ble Apex Court in the case of **Rajbir Singh Vs. Union of India & others 1991 Supp (2) SCC 272** in which the ratio of the judgment of Engineering Association case has been followed and it has been held by the Hon'ble Court in para 4 of the judgment:-

“4. Considering all these facts and circumstances and also considering the well settled decisions of this Court we are constrained to hold that the period of 11 years of ad hoc services has to be taken into consideration in determining the seniority of these appellants. The decisions in Ashok Gulati case referred to hereinbefore has no semblance of application to this case as the facts of that case are totally different from the facts of this case. It has been tried to be contended before us by the

learned counsel appearing on behalf of the respondent that since the employees who are likely to be affected by this judgment have not been impleaded, the relief should not be granted until and unless they are impleaded in this case. We are unable to find any merit of this submission for the simple reason that the question of law involved in this case is whether a person appointed on an officiating basis to a substantive vacancy and working there for a considerable period of years is entitled to have his period of ad hoc service to be reckoned while being regularized in the promoted posts.”

12. Learned counsel for the petitioner contended that ratio given in the above judgment is applicable in the case of the petitioners.

13. The learned A.P.O. relied upon the judgment of the Hon’ble Apex Court in the case of **Chief of Naval Staff and another Vs. G. Gopala Krishna Pillai and others 1996 (1) SLR 631** where it has been held that person who had been appointed on ad-hoc basis and later on the person so appointed was regularized though his initial appointment was dehors the rules the period of ad-hoc appointment cannot be counted towards seniority and Hon’ble Apex Court has considered the direct recruit’s case (supra) in this matter and Hon’ble Apex Court has held in para 5 which is as under:-

“5. The learned counsel for the respondent engaged by the Supreme Court Legal Aid Committee has, however, submitted that it is an admitted position in this case that Sri Pillai has been regularly selected to the post of Storekeeper and appointed to such post. Prior to such selection and appointment to the post of Storekeeper on regular basis, Shri Pillai had continuously officiated in the post of Storekeeper on the basis of ad hoc appointments given to him. If an employee is ultimately selected on a

regular basis to a post in which he had continuously officiated, then even if such employee had held the post only on ad hoc basis, he will be entitled to claim seniority from the date of ad hoc appointment. In support of such contention, the learned counsel has relied on a decision of this Court in *Union of India Vs. Ansusekhar Guin and others* (1989(1) SCC 283). It, however, appears to us that in the said case, this Court has only reiterated the principle that if an employee had been appointed on ad hoc or temporary basis exceeding the quota fixed for such appointment such employee would be entitled to get the credit of continuous officiation in fixing seniority provided such ad hoc or temporary appointment had been made by a regularly constituted body for holding the selection of the candidates to be appointed. In the instant case, the respondent Sri Pillai was not selected by a regularly constituted selection body for giving ad hoc appointments to the post Storekeeper and on such selection he had continued in ad hoc service till regular appointment to such post was made. On the contrary, the case of Sri Pillai is that while he had been holding ad hoc posts, he got selected on a regular basis to the said post of Storekeeper. Hence, the decision relied on by the learned counsel for the respondent is not applicable in the facts and circumstances of this case. It also appears to us that the Tribunal in passing the impugned order has relied on condition 'B' as referred to in the decision of the Constitution Bench in **Direct Recruits Class II Engineering Officers Association (supra)** in support of the impugned order. In our view, the principle enunciated in the said case is not applicable in the facts of the case because the initial appointment of Sri Pillai by way of ad hoc arrangement, was not made by following the procedure laid down by the Rules as referred to in Condition-B in the said decision. Hence, the decision of the Tribunal cannot be sustained. We, therefore, allow this appeal and set aside the impugned order without however any order as to costs.”

14. Learned counsel for the respondents A.P.O. has also referred the judgement of Hon'ble Apex Court in the case of Keshav Chandra Joshi Vs. Union of India (1992) 1 SCC 675 in which Hon'ble Apex Court has held that a person who is appointed as an ad hoc employee though in substantive posts till the regular recruits are appointed in accordance with rules. If the appointment had been made de hors the rules, such appointees cannot be the member of the service in substantive capacity. Continuation period of ad hoc service from the date of initial appointment cannot be counted towards the seniority. Hon'ble Apex Court also considered the judgment of Direct Engineer's case (supra) and also considered and explained the para 47 of the said judgment:-

“20. From the above background two questions would emerge (i) as to when promotees become members of the cadre of Asstt. Conservators in a substantive capacity in accordance with the rules and (ii) whether the entire length of service from the date of initial appointments should be counted towards their seniority. The prerequisite of the right to inclusion in a common list of seniority is that all those who claim that right must broadly bear the same characteristics. Fortuitous circumstances of their holding the grade post carrying the same designation or scale of pay or discharging the same duty would not justify the conclusion that they belong to the same cadre, due to exigencies of service temporary promotions against substantive vacancies were made. It is undoubted that preceding their promotion, an ad hoc committee had considered the cases of the promotees. Admittedly seniority subject to rejection of unfit was the criteria, followed in the selection. The selection was, therefore, in defiance of an de hors Rule 5 (b) read with Appendix 'B'.

24. In direct Recruits' case (1990(2) SCC 715 : [1990 (2) SLR 769 (SC)] the Constitution Bench of this Court in which one of us (K. Ramaswamy,

J.) was a member in propositions 'A' & 'B' in paragraph 47 at page 745 (of SCC) stated :-

“(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 rules is that where the initial appointment is only ad hoc and not according to rules and made as 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 regularization of his service in accordance with the rules, the period of officiating service will be counted”

M/s Mukhoty and Garg repeatedly asked us to apply the ratio in the cases of Narendra Chandra (AIR 1986 SC 638) : [1986 (1) SLR 437 (SC)], Rajeshwar Das (AIR 1981 SC 41) : [1980 (3) SLR 422 (SC)] and Chauhan (AIR 1977 SC 251) : [1977 (1) SLR 205 (SC)] contending that the promotees were appointed to the same post, are discharging the same duties, drawing the same salary, therefore, they should be deemed to be given promotion from their initial dates of appointment: We express our inability to travel beyond the ratio in Direct Recruits' case. While reiterating insistence upon adherence to the rule that seniority between direct recruits and the promotees has to be from the respective dates of appointment, this Court notices that in certain cases, Government by deliberate disregard of the rules promotions were made and allowed the promotees to continue for well over 15 to 20 years without reversion and thereafter seniority is sought to be fixed from the date of ad hoc appointment. In order to obviate unjust and inequitable results, this Court was constrained to evolve “rule of deemed relaxation of the relevant rules”

and directed to regularize the service giving the entire length of temporary service from the date of initial appointment for seniority. To lay down binding precedent the cases were referred to a Constitution Bench. In the Direct Recruits' case, this Court has laid down clear propositions of general application in items A to K, therefore, to keep the law clear and certain and to avoid any slant, we are of the considered view that it is not expedient to hark back into the past precedents and we prefer to adhere to the ratio laid down in the Direct Recruits' case.

25. As stated, the counsel for the promotees placed strong reliance on proposition 'B' while the counsel for the Direct Recruits relied on proposition 'A'. The controversy is as to which of the propositions would apply to the facts of this case. The proposition 'A' lays down that once an incumbent is appointed to a post according to rules, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation. The latter part thereof amplifies postulating that where the initial appointment is only ad hoc and not according to rules and is made as a stop-gap arrangement, the period of officiation in such post cannot be taken into account for reckoning seniority. The quintessence of the promotions is that the appointment to a post must be according to rules and not by way of ad hoc or stop-gap arrangement made due to administrative exigencies. If the initial appointment thus made was de hors the rules, the entire length of such service cannot be counted for seniority. In other words the appointee would become a member of the service in the substantive capacity from the date of his appointment only if the appointment was made according to rules and seniority would be counted only from that date. Propositions 'A' and 'B' cover different aspects of one situation. One must discern the difference critically. Proposition 'B' must, therefore, be read along with para 13 of the judgment wherein the ratio

decidendi of Narendra Chadha was held to have considerable force. The latter postulated that if the initial appointment to a substantive post or vacancy was made deliberately, in disregard of the rule and allowed the incumbent to continue on the post for well over 15 to 20 years without reversion and till the date of regularization of the service in accordance with the rules, the period of officiating service has to be counted towards seniority. This Court in Narendra Chadha's case was cognizant of the fact that the rules empower the Government to relax the rule of appointment. Without reading paragraph 13 and Proposition 'B' and Narendra Chadha's ratio together the true import of the proposition would not be appreciated. We would deal with the exercise of power of relaxing the rule later. After giving anxious consideration, we are of the view that the latter half of Proposition 'A' would apply to the facts of the case and the rule laid down in that half is to be followed. If the concerned rules provide the procedure to fix inter se seniority between direct recruits and promotees, the seniority has to be determined in that manner.

26. Realizing that applicability of Proposition 'B' to the facts would run into rough whether the counsel for the promotees attempted to anchor it by reiterating that as on date the Public Service Commission found the promotees eligible for confirmation as per rules. Therefore, the entire length of service would be counted for their seniority. We express our inability to accede to the contention. It is seen that appointment of the promotees as Assistant Conservators of Forest was not in accordance with rule 5 (b) read with appendix 'B' of the rules. Admittedly, the promotions were on ad hoc basis pending direct recruitment and are in excess of the quota under Rule 6. By no stretch of imagination it could be said that the promotions were made to a substantive post in accordance with the rules. Therefore, the promotees do not hold the post in substantive capacity.

33. Accordingly we have no hesitation to hold that the promotees have admittedly been appointed on ad hoc basis as a stop-gap arrangement, though in substantive posts, and till the regular recruits are appointed in accordance with the rules. Their appointments are de hors the rules and until they are appointed by the Governor according to rules, they do not become the members of the service in a substantive capacity. Continuous length of ad hoc service from the date of initial appointment cannot be counted towards seniority. The Governor shall have to make recruitment by promotion to substantive vacancies in the posts of Asstt. Conservator of Forest, if not already made, in accordance with R. 5 (b) read with Appendix 'B' and R. 6. Their seniority shall be counted only from the respective dates of appointment to the substantive posts in their quota under R. 6 as per the rules. The direct recruits having been appointed in accordance with R. 5 (a) read with Appendix 'A', their seniority shall be counted from the date of their discharging the duties of the post of Asstt. Conservator of Forest and the seniority of the direct recruits also shall accordingly be fixed. The inter se seniority of the direct recruits and promotees shall be determined in accordance with Rs. 5, 6 and the R. 24 in the light of the law declared in the judgment. All the employees are entitled to all consequential benefits. On account of the pendency of judicial proceedings, if any of the employees become barred by age for consideration for promotion to cadre posts, the appropriate Governments would do well to suitably relax the rules and do justice to the eligible conditions”

15. The judgment of the Hon'ble Apex Court delivered in Engineering Association case (supra) was explained by the Hon'ble Apex Court in the case of **State of Haryana & others Vs. Vijay Singh & others (2012) 8 SCC 633**. The Hon'ble Apex Court held under:-

“25. After examining the relevant rules, the Court in Direct Recruit Class II Engg. Officers’ Assn. case (supra) culled out the following propositions:

“(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 stopgap 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 regularization of his service in accordance with the rules, the period of officiating service will be counted.”

.....

26. In State of W.B. v. Aghore Nath Dey the three-Judge Bench considered an apparent contradiction in conclusions (A) and (B) in the judgment of the Constitution Bench, and observed: (SCC pp. 382-83, paras 22 & 25)

“22. There can be no doubt that these two conclusions have to be read harmoniously, and conclusion (B) cannot cover cases which are expressly excluded by conclusion (A). We may, therefore, first refer to conclusion (A). It is clear from conclusion (A) that to enable seniority to be counted from the date of initial appointment and not according to the date of confirmation, the incumbent of the post has to be initially appointed, ‘according to rules’. The corollary set out in conclusion (A), then is, that ‘where the initial appointment is only ad hoc and not according to rules and made as a stopgap arrangement, the officiation in

such posts cannot be taken into account for considering the seniority'. Thus, the corollary in conclusion (A) expressly excludes the category of cases where the initial appointment is only ad hoc and not according to rules, being made only as a stopgap arrangement. The case of the writ petitioners squarely falls within this corollary in conclusion (A), which says that the officiation in such posts cannot be taken into account for counting the seniority.

* * * * *

25. In our opinion the conclusion (B) was added to cover a different kind of situation, wherein the appointments are otherwise regular, except for the deficiency of certain procedural requirements laid down by the rules. This is clear from the opening words of the conclusion (B), namely, 'if the initial appointment is not made by following the procedure laid down by the rules' and the latter expression 'till the regularization of his service in accordance with the rules'. We read conclusion (B), and it must be so read to reconcile with conclusion (A), to cover the cases where the initial appointment is made against an existing vacancy, not limited to a fixed period of time or purpose by the appointment order itself, and is made subject to the deficiency in the procedural requirements prescribed by the rules for adjudging suitability of the appointee being eligible and qualified in every manner for a regular appointment on the date of initial appointment in such cases. Decision about the nature of the appointment, for determining whether it falls in this category, has to be made on the basis of the terms of the initial appointment itself and the provisions in the rules. In such cases, the deficiency in the procedural requirements laid down by the rules has to be cured at the first available opportunity, without any default of the employee, and the appointee must continue in the post uninterruptedly till the regularization of his service, in accordance with the rules. In such cases, the appointee is not to blame for the deficiency in the

procedural requirements under the rules at the time of his initial appointment, and the appointment not being limited to a fixed period of time is intended to be a regular appointment, subject to the remaining procedural requirements of the rules being fulfilled at the earliest. In such cases also, if there be any delay in curing the defects on account of any fault of the appointee, the appointee would not get the full benefit of the earlier period on account of his default, the benefit being confined only to the period for which he is not to blame. This category of cases is different from those covered by the corollary in conclusion (A) which relates to appointment only on ad hoc basis as a stopgap arrangement and not according to rules. It is, therefore, not correct to say, that the present cases can fall within the ambit of conclusion (B), even though they are squarely covered by the corollary in conclusion (A).”

27. In *M. K. Shanmugam v. Union of India* another three-Judge Bench referred to the aforementioned two judgments and observed: (SCC pp 482-83, para 8)

“8. If the ad hoc selection is followed by regular selection, then the benefit of ad hoc service is not admissible if ad hoc appointment is in violation of the rules. If the ad hoc appointment has been made as a stopgap arrangement and where there was a procedural irregularity in making appointments according to rules and that irregularity was subsequently rectified, the principle to be applied in that case was stated once again. There is difficulty in the way of the appellants to fight out their case for seniority should be reckoned by reason of the length of the service whether ad hoc or otherwise inasmuch as they had not been recruited regularly. As stated earlier, the appellants were regularly found fit for promotion only in the year 1977 and if that period is reckoned their cases could not be considered as found by the Tribunal. The view expressed by

this Court in these cases have been again considered in the decisions in *Anuradha Bodi v. MCD*, *Keshav Deo v. State of U.P.*, *Major Yogendra Narain Yadav v. Bindeshwar Prasad*, *I. K. Sukhija v. Union of India and Govt. of A. P.* *v. Y Sagaraswara Rao* but all these decisions do not point out that in case the promotions had been made ad hoc and they are subsequently regularized in the service in all the cases, ad hoc service should be reckoned for the purpose of seniority. It is only in those cases where initially they had been recruited even though they have been appointed ad hoc the recruitment was subject to the same process as it had been done in the case of regular appointment and that the same was not a stopgap arrangement.”

28. In *State of Haryana v. Haryana Veterinary & AHTS Assn.* the three Judge Bench considered the question whether the ad hoc service rendered by the respondents in the cadre of Assistant Engineers can be added to their regular service for the purpose of higher pay scale. While reversing the judgment of the majority of the Full Bench which had ruled in favour of the writ petitioner and declared that ad hoc service was to be clubbed with the regular service for the purpose of grant of financial benefits, this Court held: (SCC pp. 10-11, para 15)

“15. A combined reading of the aforesaid provisions of the Recruitment Rules puts the controversy beyond any doubt and the only conclusion which could be drawn from the aforesaid Rules is that the services rendered either on an ad hoc basis or as a stopgap arrangement, as in the case in hand from 1980 to 1982 cannot be held to be regular service for getting the benefits of the revised scale of pay or of the selection grade under the government memorandum dated 2-6-1989 and 16-5-1990, and therefore, the majority judgment of the High Court must be held to be contrary to the aforesaid provisions of the Recruitment Rules,

consequently cannot be sustained. The initial letter of appointment dated 6-12-1979 pursuant to which respondent Rakesh Kumar joined as an Assistant Engineer on an ad hoc basis in 1980 was also placed before us. The said appointment letter unequivocally indicates that the offer of appointment as Assistant Engineer was on ad hoc basis and Clauses 1 to 4 of the said letter further provides that the appointment will be on an ad hoc basis for a period of 6 months from the date of joining and the salary was a fixed salary of Rs. 400 per month in the scale of Rs. 400 to Rs. 1100 and the services were liable to be terminated without any notice and at any time without assigning any reason and that the appointment will not enable the appointee any seniority or any other benefit under the Service Rules for the time being in force and will not count towards increment in the time scale. In view of the aforesaid stipulations in the offer of appointment itself we really fail to understand as to how the aforesaid period of service rendered on ad hoc basis can be held to be service on regular basis. The conclusion of the High Court is contrary to the very terms and conditions stipulated in the offer of appointment and, therefore, the same cannot be sustained.”

* * * * *

30. None of aforesaid judgments can be read as laying down a proposition of law that a person who is appointed on purely ad hoc basis for a fixed period by an authority other than the one who is competent to make regular appointment to the service and such appointment is not made by the specified recruiting agency is entitled to have his ad hoc service counted for the purpose of fixation of seniority. Therefore, the respondents, who were appointed as Masters in different subjects, Physical Training Instructor and Hindi Teacher on purely ad hoc basis without following the procedure prescribed under the Rule 1955 Rules are not entitled to have their seniority fixed on the basis of total length of service. As a corollary to this, we hold that the direction given by the High Court for re-fixation of

the respondents' seniority by counting the ad hoc service cannot be approved.”

16. Some of the untrained Patwaris who were similarly situated persons were sent for training alongwith the petitioners. Respondents did not pay the salary to them for the period of training. Though those petitioners feeling aggrieved by non-payment of salary for the period of training filed a Writ Petition Nos. 5011 of 1983, 5012 of 1983, 5025 of 1983, 5575 of 1983 and 4027 of 1983 before the Hon'ble High Court of Allahabad. The Hon'ble Court after hearing of this petition allowed the petition and made observation as under:-

“We may however make it clear that it does not follow that these persons, merely because their services have not been terminated and are allowed to continue in service while undergoing training, would be entitled to seniority over regular appointees of trained persons. Seniority would be governed by such provisions as Government may choose to make in that behalf.”

The Special Leave Petition was filed before the Hon'ble Supreme Court which was dismissed by the Hon'ble Supreme Court. Documents have been filed by the learned counsel for the petitioners as Annexures-6 & 7 to the petition.

17. The above quoted observations of the Hon'ble Court clearly provides that the seniority would be provided to untrained Lekhpals according to rules and the untrained Lekhpals would be entitled for the salary for the period they had been sent for the training in the school. Thus, this observation has attained the finality.

18. Whereas the question of non-availability of Lekhpal Training School in the State of U.P. from 1975 to 1978 is concerned is of no avail to the petitioners. The petitioners have no right to seek admission in the said school controlled and run by the State of U.P. They could only be admitted as and when the State Government wanted to admit them and train them. As such, there is no force in the contention of the learned counsel for the petitioner.

19. No other points were pressed before us by the parties.

20. In view of the above, petitioners were not trained Lekhpals. They did not have the requisite qualification to be a regular Lekhpal when they were appointed as untrained Lekhpal in the department of respondents. It is clear from the record that certain new posts were created so there was dearth of Lekhpals, so the respondents had to meet the said exigency, the untrained Lekhpals were appointed in the different Halkas on ad hoc basis. They did not hold the requisite qualification as provided under Rules 5 & 6 of the Lekhpal Rules, 1958. Their appointment had not been made by due process of law in accordance with rules; they were appointed on ad hoc basis. It is settled position of law as discussed above, if any person has been appointed without any due process of law and without having any requisite qualification, he cannot claim seniority from the date of his initial appointment; he can only get his seniority from the date of his regularization. Thus, the Government had not deliberately delayed their regular appointment and it is not pleaded in the petition that there was any malice or ill-will against the petitioners and their regularization was delayed. It is revealed from the record that Government to meet the exigencies appointed them immediately and thereafter the order of regularization on the regular post of Lekhpal and for sending them to

training school were issued. Thus, we find that the conclusions of learned counsel for the petitioners have no force. We completely agree with the submissions of the learned counsel for the State.

21. In view of the above legal and factual aspects, the petitioners' period from initial appointment to the date of regularization cannot be counted for fixing the seniority of the petitioners.

22. The petition is liable to be dismissed. Therefore, the petition is hereby dismissed accordingly. No order as to costs.

Sd/-

(U.D.CHAUBE)
MEMBER (A)

Sd/-

(JUSTICE J.C.S.RAWAT)
CHAIRMAN

DATE: 3 July, 2013