IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.9163 OF 2022

1. Smt. Samiksha D/o Ramakant Chandrakar,
Age: 51 Yrs., Occ: Service as Deputy
Commissioner (EGS),
Divisional Commissioner (Revenue)'s office.
Aurangabad, R/o Plot No. 363,
Sector - E, N-1, CIDCO,
Aurangabad 431 003.
Mobile No. 9822186477.

2. Pandurang Ramrao Kulkarni,
Age: 57 Yrs., Occ: Service as
Deputy Commissioner (Resettlement),
Divisional Commissioner (Revenue)'s
office, Aurangabad,
R/o Plot No. 20, 'Indradhanu',
Opp. Kasliwal Corner, N-2, CIDCO,
Aurangabad 431 003.
Mobile No. 9422208018.

...PETITIONERS

-VERSUS-

1. The State of Maharashtra.
Through the Additional Chief Secretary,
Revenue & Forest Department,
Mantralaya, Mumbai 400 032.

2. The Additional Chief Secretary,
General Administration Department,
Mantralaya, Mumbai 400 032.

3. The Additional Chief Secretary,
Finance Department, Mantralaya,
Mumbai 400 032.

4. The Principal Secretary,
Law and Judiciary Department,
Mantralaya, Mumbai 400 032.

5. Shri Vijay s/o Shankarrao Deshmukh,
Age: Major, Occ: Service as
Additional Collector, Collectorate, Pune.

6. Shri Trigun S/o Shamrao Kulkarni,
Age: Major, Occ: Service as
Deputy Commissioner (Supply),
Divisional Commissioner (Revenue)'s
Office, Pune Division, Pune.

7. Smt. Rupali d/o Vilas Awale,
Age: Major, Occ: Service as
Additional Collector,
Collectorate, Osmanabad.

8. Smt. Swati d/o Laxmanrao Deshmukh,
Age: Major, Occ: Service as
Deputy Commissioner (Supply),
Divisional Commissioner (Revenue)'s
Office, Nasik Division, Nasik.

9. Shri. Arvind s/o Rameshrao Lokhande,
Age: Major, Occ: Service as
Additional Collector, Collectorate, Latur.

10. Shri. Tushar s/o Eknath Thombre,
Age: Major, Occ: Service as
Additional Collector, Collectorate, Beed.

...RESPONDENTS

WITH
WRIT PETITION NO. 9631 OF 2022

Shri. Vijaysingh Shankarrao Deshmukh
Age: 49 Year Occ: Government Servant
Additional Collector Pune,

Collector Office at Pune. ...PETITIONER

-Versus-

1. The State of Maharashtra
Through the Principal Secretary
Department of Revenue and Forest

2. The Additional Chief Secretary
General Administration Department
M. S. Mantralay, Mumbai-32

3. The Additional Chief Secretary
Finance Department Mantralay,
Mumbai-32

4. The Principal Secretary
Law and Judiciary Department,
Mantralay, Mumbai

5. Smt. Samiksha D/O Ramakant Chandrakar.
Age-50 years, Occu.: Service as
Deputy Commissioner (EGS)
Divisional Commissioner (Revenue)'s office,
Aurangabad R/o. Plot No. 363,
Sector- E,N-1, CIDCO, Aurangabad 431003.

6. Shri. Pandurang Ramrao Kulkarni.
Age-55 years, Occu,: Service as
Deputy Commissioner (Rehabilitation),
Divisional Commissioner (Revenue)'s
Office, Aurangabad.
R/o Kasliwal Corner, N-2 CIDCO

7. Shri. Trigun S/O Shamrao Kulkarni,
Age: Major, Occu: Service as
Deputy Commissioner (Supply),
Divisional Commissioner (Revenue)'s
office, Pune Division, Pune.

8. Smt. Rupali d/o Vilas Awale,

Age: Major. Occu.: Service as
Additional Collector, Collectorate,
Osmanabad.

9. Smt. Swati S/O Laxmanrao Deshmukh,
Age- Major, Occ.: Service as
Deputy Deputy Commissioner (Supply),
Divisional Commissioner (Revenue)'s
Office, Nashik Division, Nashik.

10. Shri. Tushar Eknath Thombre
Age: Adult, Occ: Service as
Additional Collector, Collectorate, Beed.

...RESPONDENTS

WITH
WRIT PETITION NO. 9632 OF 2022

Shri Tushar Eknath Thombre,
Age : 45 years, Occ : Government Servant
Additional Collector of Beed,
C/o Collector Office, Nagar Road,
Beed.

...PETITIONER

-VERSUS-

1. The State of Maharashtra
Through the Principal Secretary
Department of Revenue and Forest.

2. The Additional Chief Secretary
General Administration Department
M. S. Mantralay, Mumbai-32

3. Shivaji S/o Tukaram Shinde,
Age-54 years, Occu. Service,
(as Asstt. Commissioner [B.C. Cell]
in O/o Div. Commissioner, Aurangabad,
R/o H No. 13, Om-Akansha Housing,

Society, Plot No. 36 Parijat Nagar,
Cidco, N-4 Aurangabad.

4. Sunil Vitthalrao Yadav,
Age- 55 years, Occu. -Service,
(as Sub-Divisional Office. Latur),
R/o-"Sinhgad" Govt. Quarter,
Opp. Tahsil Office, Latur.

5. Shri. Arvind S/O Rameshrao Lokhande,
Addl. Collector, Latur,
C/o: Collector office, Latur.

6. Shri. Shankar S/O Ramchandra Barge,
Addl. Collector, Hingoli,
C/O: Collector Office, Hingoli.

7. Shri. Pradeep S/O Pradbhakar Kulkarni,
Residential Deputy Collector, Nanded,
C/o: Collector Office, Nanded.

8. Shri. Pratap S/O Sugreev Kale,
Deputy Election Officer,
C/o: Collector Office, Osmanabad.

9. Shri. Pandurang S/O Shankarrao Kamble,
Sub Divisional Officer, Kandhar,
Tal. Kandhar, Dist. Nanded.

...RESPONDENTS

WITH
WRIT PETITION NO. 12675 OF 2022

K. Suryakrishnamurty,
Aged 53 years, having office
address at: Dy. Secretary,
State Election Commission,
Maharashtra, New Administrative Building,
Mumbai-400032.

...PETITIONER

-VERSUS-

1. The State of Maharashtra,
   Through The Chief Secretary,
   Mantralaya, Mumbai 400032

2. The Additional Chief Secretary
   (Revenue), Revenue and Forest
   Department, Mantralaya,
   Mumbai 400032

3. The Additional Chief Secretary
   (Services), General Administration
   Department, Mantralaya,
   Mumbai 400032

4. The Additional Chief Secretary
   Finance Department, Mantralaya,
   Mumbai 400032

...RESPONDENTS

WITH
WRIT PETITION NO. 11692 OF 2022

1. The State of Maharashtra,
   Through the Additional Chief Secretary,
   Department of Revenue & Forest Department
   Mantralaya, Mumbai- 400 032

2. The Additional Chief Secretary
   General Administration Department
   Mantralaya, Mumbai-400032.

3. The Additional Chief Secretary
   Finance Department
   Mantralaya, Mumbai- 400032.

4. The Principal Secretary to Government,

Law and Judiciary Department,
Mantralaya Mumbai.

...PETITIONERS

-VERSUS-

1. Shivaji S/o Tukaram Shinde,
Age- 54 years, Occu. : Service,
as Asstt. Commissioner [B.C. Cell]
in O/o Div. Commissioner, Aurangabad,
R/o. H.No.13, Om Akanksha Housing,
Society, Plot No. 36, Pariljat Nagar,
Cidco, N-4, Aurangabad.

2. Sunil Vitthalrao Yadav,
Age:-55 years, Occu. : Service,
as Sub-Divisional Officer, Latur,
R/o. "Sinhgad", Govt. Quarter,
Opp. Tahsil Office, Latur.

3. Shri Tushar s/o Eknath Thombre,
Addl. Collector, Beed,
C/o : Collector Office, Nagar Road,
Beed.

4. Shri Arvind/o Rameshrao Lokhande,
Addl. Collector, Latur,
C/o : Collector Office, Latur.

5. Shri Shankar s/o Ramchandra Barge,
Addl. Collector, Hingoli,
C/o: Collector Office, Hingoli.

6. Shri Pradeep s/o Prabhakar Kulkarni,
Residential Deputy Collector, Nanded,
C/o: Collector Office, Nanded.

7. Shri Pratap s/o Sugreev Kale,
Deputy Election Officer,
C/o : Collector Office, Osmanabad.

8. Shri Pandurang s/o Shankarrao Kamble,
Sub Divisional Officer, Kandhar,
Tal. Kandhar, Dist. Nanded.

...RESPONDENTS

WITH
WRIT PETITION NO. 12699 OF 2022

Nitin Gunaji Mahajan,
Age : 52 years, Working as Additional
Collector, currently working as
Chief Officer, Konkan Housing and
Area Development Board, MHADA,
Bandra (East), Mumbai-400051.

...PETITIONER

-VERSUS-

1. State of Maharashtra,
through Chief Secretary,
Mantralaya, Mumbai-400032.

2. The Additional Chief Secretary
(Revenue), Revenue and Forest
Department, Mantralaya,
Mumbai-400032.

3. The Additional Chief Secretary
(Services), General Administration
Department, Mantralaya,
Mumbai-400032.

4. The Additional Chief Secretary,
Finance Department, Mantralaya,
Mumbai-400032.

...RESPONDENTS

WITH
WRIT PETITION NO. 11762 OF 2022

1. The State of Maharashtra,
Through the Additional Chief Secretary,
Department of Revenue & Forest Department
Mantralaya, Mumbai- 400 032

2. The Additional Chief Secretary
General Administration Department
Mantralaya, Mumbai-400032.

3. The Additional Chief Secretary
Finance Department
Mantralaya, Mumbai- 400032.

4. The Principal Secretary to Government,
Law and Judiciary Department,
Mantralaya Mumbai.

...PETITIONERS

-VERSUS-

1. Smt. Samiksha D/o Ramakant Chandrakar
Age: 50 Years, Occ: Service
Deputy Commissioner (Revenue) office
Aurangabad, R/at Plot No. 363, Sector-E,
N-1 , CIDCO, Aurangabad 431003.

2. Shri. Pandurang Ramrao Kulkarni
Age: 55 Years, Occ: Service as
Deputy Commissioner (Rehabilitation)
Divisional Commissioner (Revenue) Office
Aurangabad, R/at Plot No.20 Indradhanu
Opp. Kasliwal Corner, N-2 CIDCO,
Aurangabad. 431003.

3. Shri. Vijay Shankarrao Deshmukh,
Age: Major, Occupation; Service
as Additional Collector,

Collectorate,Pune.

4. Shri. Trigun Shamrao Kulkarni
Age : Major, Occupation; Service as
Deputy Commissioner (Supply)
Divisional Commissioner (Revenue)'s Office,
Pune Division, Pune.

5. Smt. Rupali d/o Vilas Awale
Age: Major, Occupation; Service
as Additional Collector,
Collectorate, Osmanabad.

6. Smt.Swati Laxmanrao Deshmukh,
Age: Major, Occupation Working as
Deputy Commissioner (Supply)
Divisional Commissioner (Revenue)' s Office,
Nashik Division, Nashik.

7. Shri. Arvind Rameshrao Lokhande.
Age: Major, Occupation : Service as
Additional Collector,
Collectorate, Latur.

8. Shri. Tushar Eknath Thombre.
Age: Major, Occupation; Service
as Additional Collector,
Collectorate, Beed.

...RESPONDENTS

…

Shri Atul Rajadhyaksha, Senior Advocate a/w Shri Akhilesh Dubey, Shri Uttam Dubey, Shri Amit Dubey, Shri Krishna P. Rodge, Shri Rajuram Kuleriya i/by Law Counsellors, Advocate for the Petitioners in Writ Petition No.12699/2022.

Shri Akhilesh Dubey, Advocate a/w Shri Jiwan J. Patil, Advocate for the Petitioners in Writ Petition No.12675/2022.

Shri V.D. Sapkal, Senior Advocate a/w Shri Ujwal S. Patil and Shri Bhalchandra Shinde, Advocates for the Petitioners in Writ

Petition Nos.9632/2022 and 9631/2022.

Shri Ajay Deshpande, Shri Swapnil Joshi, Shri Sameer Kurundkar and Shri Sandip Kulkarni, Advocates for the Petitioners in Writ Petition No.9163/2022.

Shri Ram S. Apte, Senior Advocate, Special Counsel a/w Shri S.K. Tambe, AGP, for the Petitioners/ State of Maharashtra in Writ Petition No.11692/2022 and Writ Petition No.11762/2022.

Shri P.R. Katneshwarkar, Special Counsel a/w Shri S.K. Tambe, AGP, for the Respondents/ State in Writ Petition Nos.9163/2022, 12699/2022, 12675/2022, 9631/2022 and 9632/2022.

Shri Ashutosh Kumbhakoni, Senior Advocate a/w Shri P.P. More, Advocate for Respondent Nos.5 and 10 in Writ Petition No.9163/2022.

Shri Shri Sushant Dixit, Advocate a/w Shri Pandurang Gaikwad, Advocate for Respondent No.6 in Writ Petition No.9163/2022, for Respondent No.8 in Writ Petition No.9632/2022 and Respondent Nos.7 to 9 in Writ Petition No.9631/2022.

Shri V.D. Sapkal, Senior Advocate a/w Shri Bhalchandra Shinde and Shri Ujwal S. Patil, Advocates for the Respondent Nos.6 to 9 in Writ Petition No.9163/2022, for Respondent Nos.3 to 8 in Writ Petition No.11692/2022 and for Respondent No.3 in Writ Petition No.11762/2022.

Shri Avinash S. Deshmukh a/w Shri S.G. Joshi, Advocates for Respondent Nos.3 and 4 in Writ Petition No.9632/2022 and for Respondent Nos.1 and 2 in Writ Petition No.11692/2022.

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(Dates of hearing :- 07.08.2023, 08.08.2023, 09.08.2023, 10.08.2023, 18.08.2023, 23.08.2023, 29.08.2023, 12.09.2023, 27.09.2023, 12.10.2023, 19.10.2023, 03.11.2023, 30.11.2023, 01.12.2023, 06.12.2023, 07.12.2023, 22.12.2023, 16.01.2024, 31.01.2024, 08.02.2024, 02.05.2024, 09.05.2024, 28.06.2024, 05.07.2024 and 12.07.2024)

CORAM : RAVINDRA V. GHUGE
&
Y. G. KHOBRAGADE, JJ.

Reserved on : 12th July, 2024

Pronounced on : 08th August, 2024

JUDGMENT (*Per Ravindra V. Ghuge, J.*):-

1. **Rule. Rule made returnable forthwith and heard finally, with the consent of the parties.**

We are reminded of the words of the Hon'ble Supreme Court in ***O.P. Singla and another vs. Union of India and others, (1984) 4 SCC 450*** :-

"Once again, we are back to the irksome question of inter se seniority between promotees and direct recruits".

2. In this judgment, for the sake of brevity, the 'Directly Appointed Deputy Collectors' would be referred to as 'DDC' and the 'Promotee Deputy Collectors' would be referred to as 'PDC'.

3. The two Petitions (Transfer Application Nos.1 and 2

of 2021) were filed by Shivaji Tukaram Shinde with Sunil Vitthalrao Yadav and Smt. Samiksha Ramakant Chandrakar with Pandurang Ramrao Kulkarni. These four Applicants (PDC) had challenged the final seniority list of the officers in the cadre of Deputy Collectors for the period 01.01.1999 to 31.12.2003 published by the State vide circular dated 31.12.2020, which was the impugned seniority list. The grievance of these Applicants was that they had been wrongly pushed down from Sr.Nos.411 and 413 (provisional seniority list published on 24.09.2009) to Sr.Nos.599 and 603, respectively, by the impugned final seniority list published on 31/12/2020. The other two were pushed down from Sr.Nos.323 and 328 to Sr.Nos.500 and 506, respectively. It was contended that the State desired to favour the DDC and hence, the seniority of the PDC was wrongly reckoned with from the date, other than their date of continuous officiation. For the sake of brevity, the prayers in Transfer Application Nos.1 and 2 of 2021, are reproduced hereunder :-

*"**Transfer Application No.1/2021**:-*

A) Rule may kindly be issued.

B) Rule may kindly be made absolute by quashing & setting aside the impugned final seniority list of the cadre of Deputy Collectors dated 31/12/2020 (Annex. H) prepared & published by Resp. No. 1.

C) Rule may kindly be made absolute by further directing the Resp. No. 1 to prepare & publish a fresh final seniority list of the cadre of Deputy Collectors perfectly in tune with the provisions of Rules 4, 10, 12, 13 and 14 of the "Maharashtra Deputy Collectors (Recruitment, Fixation of Seniority and Confirmation) Rules, 1977 and on the basis of the provisional seniority list already prepared & published on 24/09/2009.

D) Pending the admission, hearing and final disposal of this Writ Petition the effect, operation and implementation of the impugned final seniority list of the cadre of Deputy Collectors dated 31/12/2020 (Annex. H) prepared & published by Resp. No. 1 may kindly be stayed and the Resp. No. 1 may kindly be restrained from effecting any promotions on the basis of the said list.

E) The cost of this Writ Petition be awarded to the petitioner.

F) Any other appropriate relief as may be deemed fit by this Hon'ble Court be granted in favour of the petitioner.

***Transfer Application No.2/2021**:-*

A) Writ Petition may kindly be allowed.

B) The impugned Final Seniority Lists published by R-1 vide Circular dated 31.12.2020 at Exh. 'E' may kindly be quashed and set aside, by directing to prepare the Seniority Lists strictly in tune with the provisions of Rule 4 read with Rule 13 and Rule 14 of the Maharashtra Deputy Collectors (Recruitment, Fixation of Seniority & Confirmation) Rules, 1977 at Exh. 'B' hereto.

C) Pending hearing and final disposal of this Writ Petition, execution & implementation of the impugned Seniority List published by R-1 vide Circular dated 31.12.2020 at Exh. 'E' may kindly be stayed by keeping the same in

abeyance.

D) Respondent No. 1 may kindly be directed not to effect further promotions on the basis of the impugned Seniority Lists published vide Circular dated 31.12.2020 at Exh. 'E'.

E) Any other suitable and equitable relief, to which the petitioners are entitled to, and this Hon'ble Court deems fit, may kindly be granted in their favour."

4. All the Petitioners, including the State of Maharashtra, expressly canvassed in the open Court that they all are aggrieved by the impugned Judgment and order dated 26.08.2022, delivered by the Maharashtra Administrative Tribunal (hereinafter referred to as the Tribunal). However, each of the Petitioner desired that the impugned judgment should be partly set aside to the extent it is adverse to him/ her and the particular portion which is favourable to each of them, should not be disturbed. We had granted adjournments to the litigating parties on at least two occasions, to state whether we should remand the matters to the Tribunal, for fresh consideration. However, the original Applicants insisted that these Petitions should be considered on their merits. Shri Kumbhakoni, learned Senior Advocate submitted that the whole judgment be set aside and the matters be remanded to the Tribunal and, since no

interim relief has been granted by this Court, the State be permitted to proceed with promotions, notwithstanding the remanded cases before the Tribunal

5. We have recorded the lengthy submissions of the learned advocates. We could not conduct hearing in these matters in between 08.02.2024 to 02.05.2024 as one of us (Brother Justice Khobragade) was not available due to medical reasons. Lastly, they have addressed us on 05.07.2024 and additional written notes were tendered on 12.07.2024. It would be apposite to summarize their submissions, in this judgment.

Submissions of learned Senior Advocate Shri V.D. Sapkal

6. Shri V.D. Sapkal, has extensively canvassed on behalf of Respondent No.10 in Writ Petition No.9163/2022. The said Respondent is the Petitioner in Writ Petition No.9632/2022. According to him, the issue is as regards the dates of seniority for the purposes of settling the deemed dates of promotion.

7. Both the Petitioners, namely, Smt.Samiksha Ramakant Chandrakar and Shri Pandurang Ramrao Kulkarni,

were appointed as Tahasildar on 24.02.1994 and 31.05.1994, respectively. Both of them assumed office as Tahasildar on the same day, 02.03.1994. Consequentially, both of them completed five years as Tahasildar, on 01.03.1999. Both were appointed as Deputy Collector, on 09.07.1999 and both were then promoted to the cadre of Additional Collector, from 30.01.2020.

8. Shri Sapkal has tendered a compilation of documents on behalf of his client, the Petitioner in Writ Petition No.9632/2022. The document at Sr.No.1 is the order passed by the State Government, on 09.07.1999, for appointing Tahasildars on temporary basis in the cadre of the Deputy Collector. The order clearly indicates that such Tahasildars are being granted temporary promotion in the cadre of Deputy Collector "*Nivval Tatpurtya Swaroopat Padonnati*", (purely on temporary basis). Petitioner No.1 Smt.Chandrakar is at Sr.No.76 and Petitioner No.2 Shri Kulkarni is at Sr.No.81. He then points out the concluding remarks in the said order, viz. 'the said temporary promotion will be subject to the approval of the Maharashtra Public Service Commission' (MPSC/Commission). It was expressly mentioned that they would not be entitled to any

benefits and the Divisional Commissioners were directed to apprise such Tahasildars that, ‘no requests with regard to such temporary promotion and in the nature of any changes that may be sought in their Departments’, would be entertained by the Government. To be more specific, the directions issued are reproduced as under:-

"संबंधित विभागीय आयुक्तांना विनंती करण्यात येते की, पदोन्नती अधिकान्यांना त्यांच्या नियुक्तीच्या ठिकाणी रुजू होण्यासाठी सध्य कार्यभारातून तात्काळ कार्यमुक्त करावे.

संबंधित अधिकान्यांना उपजिल्हाधिकारी पदावर देण्यात आलेली पदोन्नती ही पूर्णपणे तात्पुरत्या स्वरूपाची असून शासन व महाराष्ट्र लोकसेवा आयोगाच्या अंतिम मान्यतेच्या अधीन राहून देण्यात येत आहे या पदोन्नतीमुळे त्यांना उपजिल्हाधिकारी संवर्गात सेवाजेष्ठता वेतननिश्चिती, इत्यादीबाबत कोणत्याही प्रकारचे अधिकारी प्रदान होणार नाहीत.

विभागीय आयुक्तांनी पदोन्नत अधिकान्यांना अशीही जाणीव दयावी की, ही पदोन्नती तात्पुरती असल्या कारणाने विभाग बदलून देण्यासंबंधीच्या किंवा त्यांच्या प्रत्यक्ष नेमणूका विभाग स्तरावर बदल करण्यासंबंधीच्या त्यांच्या कोणत्याही विनंतीची शासनाकडून दखल घेतली जाणार नाही.”

9. Shri Sapkal, therefore, contends that none of these Tahasildars were promoted in consultation of the MPSC and,

therefore, their temporary promotion would not accrue any right for regularization from the deemed dates of promotions. Though this issue relates back to 1999, their seniority altered by the impugned final seniority list, cannot be faulted.

10. Shri Sapkal then draws our attention to the Government Order dated 30.01.2020, which is with regard to yet another temporary promotion granted to these Petitioners. The said order refers to a decision of the Bombay High Court dated 18.12.2019, delivered in Writ Petition No.11368/2019 (***Ajinkya Natha Padwal and others vs. State of Maharashtra and others***) and connected petitions wherein, this Court had ordered as under:-

> "(iii) *Needless to mention, it is open for the State Government to take an independent decision whether to make promotions on adhoc basis pending finalization of seniority list.*"

11. He then draws our attention to the specific words "*Saksham Pradhikarnachya Mannyatene Tadartha Padonnatya Denyat Yet Aahet".* His client, namely, Shri Vijaysinha Shankarrao Deshmukh is at Sr.No.1, since he is a directly appointed Deputy Collector (DDC). Smt.Chandrakar is at

Sr.No.33 and Shri Kulkarni is at Sr.No.38. Both are PDC. At Sr.No.43, is Shri Tushar Eknath Thombre, who is a directly appointed Deputy Collector from the 2001 batch and who is the Petitioner in Writ Petition No.9632/2022.

12. He then draws our attention to clause 4 in the said Government order dated 30.01.2020, which is reproduced as under:-

"4. उप जिल्हाधिकारी (निवडश्रेणी) (गट-अ) या संवर्गातील उक्त अधिकान्यांना अपर जिल्हाधिकारी (गट-अ) या संवर्गात खालील अटी / शर्तीच्या अधीन राहून तदर्थ पदोन्नत्या देण्यात येत आहेत. :-

(i) पदोन्नतीसाठी पात्र ठरलेल्या उपरोक्त अधिकाऱ्यांना देण्यात येणाऱ्या अपर जिल्हाधिकारी संवर्गातील ह्या तदर्थ स्वरुपाच्या आहेत.

(ii) संदर्भ क्र. २ येथील नमूद सामान्य प्रशासन विभागाच्या पत्रान्वये प्राप्त अपर जिल्हाधिकारी पदावरील पदोन्नतीची निवड सूची ही उप जिल्हाधिकारी संवर्गाची दि.०३.०३.२०१८ ची तात्पुरती ज्येष्ठता सूची विचारात घेऊन तयार करण्यात आली असल्याने सदर पदोन्नत्या तदर्थ स्वरुपाच्या राहतील व उप जिल्हाधिकारी या निम्न संवर्गाची ज्येष्ठता सूची अंतिम झाल्यानंतर होणाऱ्या तद्वदनुषंगिक सेवा जेष्ठतेच्या अधिन राहून सदर अधिकाऱ्यांच्या पदोन्नत्या नियमित करण्यासंदर्भात आदेश निर्गमित करण्यात येतील.

(iii) सदर निवडसूची व तदर्थ पदोन्नती यास महाराष्ट्र लोकसेवा आयोगाची मान्यता प्राप्त झाल्यानंतरच पदोन्नतीच्या पदावर सेवाज्येष्ठता व अन्य सेवाविषयक लाभ मिळण्यास पदोन्नत अधिकारी पात्र राहतील.

(iv) सदर सर्व तदर्थ पदोन्नत्या या अपर जिल्हाधिकारी संवर्गाच्या वित्त विभागाच्या मान्यतेने मंजूर होणाऱ्या सुधारित आकृतीबंध निश्चितीच्या अधिन राहतील.

(v) प्रतिनियुक्तीवर कार्यरत असलेले ज्येष्ठ अधिकारी यांचे प्रत्यावर्तन झाल्यानंतर त्यांच्यासाठी अपर जिल्हाधिकारी या संवर्गात पद रिक्त नसल्यास या आदेशातील कनिष्ठतम अधिकान्यांना पदावनत करण्याच्या अधीन राहून सदर तदर्थ पदोन्नती देण्यात येत आहे.

(vi) मा. सर्वोच्च न्यायालयात प्रलंबित असलेल्या विशेष अनुमती याचिका क्र. २८३०६/२०१७ मध्ये होणाऱ्या अंतिम निर्णयाच्या अधिन राहून, मा. उच्च न्यायालय, मुंबई यांनी रिट याचिका क्र. ११३६८/२०१९ व इतर याचिकांमध्ये दि. १८ डिसेंबर, २०१९ रोजी दिलेल्या निर्णयानुसार तसेच सामान्य प्रशासन विभागाने दि. २९ डिसेंबर २०१७ च्या पत्रान्वये दिलेल्या मार्गदर्शनपर सूचनांनुसार सदरहू तदर्थ पदोन्नत्या देण्यात येत आहेत."

He, therefore, submits that unless the State of Maharashtra acquires the approval of the Commission, there cannot be confirmation of an employee on the said promotional post.

13. He, then draws our attention to the Government circular, dated 03.03.2018 by which a provisional seniority list was declared by the State Government. This was challenged before the Principal Seat in Writ Petition No.11368/2019 (***Ajinkya Natha Padwal and others vs. State of Maharashtra and others***) and connected matters. The Division Bench of this Court delivered a Judgment on 18.12.2019, more specifically, paragraph Nos.11 to 18, as under:-

> *"11. During the pendency of the O.A. No.916 of 2016, pursuant to the order dated 25.07.2017 in Miscellaneous Application No.292 of 2017 filed by the State Government, the Tribunal allowed the State Government to effect promotions in the cadre of Additional Collector (Selection Grade) subject to the outcome of the O.A. based on provisional seniority list then in existence. The Tribunal passed the order directing the State Government that the final proclamation of the seniority list should not be made without express leave of the Tribunal.*
>
> *12. On 03.10.2017 the State Government effected promotions to the posts of Deputy Collector (Selection Grade) and Additional Collector on the basis of the draft final seniority list. Till 03.10.2017 all promotions were made on the basis of earlier provisional seniority list.*
>
> *13. The State Government thereafter published a fresh provisional seniority list of Deputy Collectors on 03.03.2018 for the period 01.01.1999 to 31.12.2000 and 01.01.2001 to 31.12.2003. It is the contention of the*

promotees that this provisional seniority list of 3.3.2018 had the effect of pushing down the promotee Deputy Collectors below the Direct Recruits in the order of seniority. It is contended by promotees that by publishing the said list the benefit of seniority to the promotees from the dates of their actual promotions is denied and the quota rule in favour of direct recruits was wrongly applied.

14. *The provisional seniority list of 03.03.2018 was challenged by one promotee-Deputy Collector by fling O.A. No.308 of 2018. However, O.A. No.308 of 2018 was disposed of by the Tribunal on 03.09.2018 as challenge to the provisional seniority list was premature.*

15. *On 07.09.2018 one of the promotee (Ajinkya Natha Padwal – the petitioner No.1 in Writ Petition No.11368 of 2019) filed M.A. No.468 of 2018 in O.A. No.916 of 2016 seeking interim order of stay on promotions on the basis of provisional seniority list dated 03.03.2018. On 14.09.2018 the Tribunal by its order in M.A. No.468 of 2018 directed the State Government not to issue any order of ad-hoc promotions unless the seniority list is finalised without express leave of the Tribunal.*

16. *Thereafter, the State Government filed M.A. No.429 of 2019 seeking leave of the Tribunal to effect promotions from the cadre of Deputy Collector to the grade of Deputy Collector (Selection Grade) purely by way of temporary arrangement, subject to further orders and on the terms and conditions that may be imposed by the Tribunal. By order dated 13.08.2019 the Tribunal permitted the State Government to issue ad-hoc promotions to the post of Deputy Collector (Selection Grade) "for the purpose stated in the M.A.". Though it is recorded in the order that the promotees consented to such order being passed, according to the promotees, said concession was erroneously*

recorded. It is the contention of the promotees that the application was made for speaking to the minutes but the same has not been disposed of .

17. Thereafter, on 14.08.2019 the State Government issued promotion orders. According to the promotees the dates of promotion of 48 promotee Deputy Collectors in the Selection Grade were illegally altered. By second order dated 14.08.2019, 40 Direct Recruits are granted ad-hoc promotions as Deputy Collectors (Selection Grade) retrospectively from various dates beginning from 31.05.2011.

18. Sometime after 14/8/2019 the Direct Recruits applied to the Tribunal for withdrawal of O.A. No.916 of 2016. While allowing the application for withdrawal by impugned order dated 29/8/2019 the Tribunal recorded that the State Government had already promoted 48 Officers from the provisional seniority list published on 03.03.2018 of Deputy Collector (Selection Grade) by an order dated 14.08.2019. The Tribunal further permitted the State Government to promote 57 Officers who are eligible, suitable and in the zone of consideration."

14. He submits that after considering the submissions on behalf of the promotees, which are reproduced in paragraph 20, the submissions on behalf of the direct recruits (DDC) and the submissions on behalf of the State Government, were recorded in paragraph 21 and 22. The conclusions of the Court are found in paragraphs 23 to 29 and the operative part, which read thus:-

"23. This is an inter se seniority dispute between Direct Recruit Deputy Collectors and promotee Deputy Collectors. The provisional seniority list was published in 2009 and thereafter in 2014. Ad-hoc promotions were made on the basis of these provisional seniority lists. The provisional seniority lists of 2009 and 2014 are prepared by granting seniority to the promotees from the date of promotion by taking into consideration the length of continuous service in the cadre. Ad-hoc promotions in the grade of Deputy Collectors and the post of Additional Collectors also came to be made on the basis of provisional seniority lists of 2009 and 2014. It is the grievance of the Direct Recruits that the provisional seniority lists are not prepared in accordance with the Rules of 1977. According to the Direct Recruits, Rules of 1977 provides for 35% quota for Direct Recruits which is not adhered to. The promotees were promoted as against the quota meant for Direct Recruits. The Direct Recruits contend that the promotees have misconstrued the decision of the Tribunal in O.A. No. 526 of 2004 as the Tribunal nowhere indicates that quota meant for Direct Recruits should not be followed while publishing the combined seniority list.

24. The Direct Recruits approached the Tribunal by fling O.A. No.916 of 2016 for direction that the seniority list of Deputy Collectors should be finalised. It is their contention that since 2009 the State Government is only publishing the provisional seniority list and effecting promotions on ad-hoc basis. Even during the pendency of the O.A., the Tribunal granted leave to the State Government to effect promotions and/or the State Government effected promotions on ad-hoc basis as per the provisional seniority list of 2014.

25. It is when the State Government published the provisional seniority list on 03.03.2018 that the

promotees were pushed down in the provisional seniority list. When the question of further promotions arose, the Direct Recruits who now were placed higher in the seniority list of 3/3/2018 are considered by the State Government for promotion on ad-hoc basis. Accordingly, 48 Officers were promoted from the provisional seniority list of 03.03.2018 as Deputy Collector (Selection Grade) by an order issued on 14.08.2019. The State Government also wanted to promote 57 officers from the list of Deputy Collector (Selection Grade) as Additional Collector in view of the administrative exigency purely on temporary basis. The State Government sought leave of the Tribunal to issue orders promoting them. Pending this application of the State Government, the Direct Recruits made an application for withdrawing the O.A. In our opinion, the Tribunal should have simply permitted the Direct Recruits to withdraw the O.A. In the O.A. filed by the Direct Recruits claiming the relief directing the State Government to prepare the final seniority list, the Tribunal has committed an error in permitting the State Government to promote 57 officers as Additional Collectors. The application made by the State Government seeking leave to promote 57 officers would not survive for consideration upon withdrawal of the O.A. filed by direct recruits.

26. *There is no serious challenge by any of the parties to the direction issued by the Tribunal to finalise the seniority list. In any case, learned Senior Counsel Shri Apte has made a statement that the State Government would finalise the seniority list by end of January, 2020 after taking into considering the representations and objections of all concerned. Learned Senior Counsel Shri Apte has further clearly indicated that the*

promotions which have been made during pendency of O.A.916 of 2016 are purely on ad-hoc basis and the same are subject to final seniority list. In view of this submission, the apprehension of the promotees, that Direct Recruits who are promoted on ad-hoc basis in terms of the provisional seniority list of 3 rd March, 2018 would claim equities and assert their rights on the basis of such ad-hoc promotions is misplaced and unfounded.

27. *It is further submission of learned Senior Counsel Shri Apte that even if the order of the Tribunal is sustained, no prejudice will be caused to any one, as most of the promotees including the direct recruits who are parties to these Petitions are likely to get promotions on adhoc basis. These promotions will obviously be subject to final seniority list. According to learned Senior Counsel Shri Apte only some of the petitioners who are represented by learned Senior Counsel Shri Setalwad are likely to be deprived of the benefit of ad-hoc promotion as they are not in the zone of consideration for promotion in terms of the provisional seniority list of 3rd March, 2018.*

28. *Taking an over all view of the matter, we refrain from addressing on the larger issue raised by learned Senior Counsel for the petitioners that the direct recruits should not be allowed to continue to take advantage of the interim orders in their favour once they have withdrawn the O.A.. Suffice it to observe that even on the previous occasions, the ad-hoc promotions were made on the basis of the provisional seniority list of 2009 and those of 2014 which by and large benefited the promotees. The provisional seniority list of 3rd March, 2018 ensures to the benefit of direct recruits. Even the State Government has taken a specific stand that the final seniority list would be published by the end of January,*

2020. In this view of the matter, we do not find this is to be a ft case to interfere with the ad-hoc promotions already made on the basis of the provisional seniority list of 3rd March, 2018 which even according to Shri Apte are purely on ad-hoc basis subject to final seniority list. It is therefore clear that the said promotions are purely on ad-hoc basis subject to the final seniority list to be prepared by the State Government by the end of January, 2020.

29. *We are however of the opinion that Clause (6) of the impugned order of the Tribunal which permits the State Government to promote 57 officers calls for interference. According to us, on a motion made by the direct recruits for withdrawal of the O.A., the Tribunal should not have permitted the State Government to promote 57 direct recruits, more so, when the O.A. was at the instance of the direct recruits essentially for the relief of finalising the seniority list. On a motion made by the direct recruits for withdrawal of the O.A., the question of considering any pending application and that too of the State Government was uncalled for. The other reason why we are inclined to interfere with clause (6) of the impugned order passed by the Tribunal is that by issuing this direction the promotees are deprived of an opportunity to test the correctness of the ad-hoc promotions if made by the State Government before the Tribunal. We therefore quash and set aside Clause (6) of the impugned order passed by the Tribunal. We may however hasten to add that considering the exigency of the administration, it is for the State Government to independently consider the question of effecting ad-hoc promotions pending finalisation of seniority list which will afford a fair opportunity to the aggrieved to test the decision before the Tribunal on grounds legally permissible. Hence the following order.*

ORDER

(i) Clause (6) of the impugned order dated 29th August, 2019 passed by the Tribunal in O.A. No. 916 of 2016 and O.A. No. 1099 of 2016 is quashed and set aside.

(ii) The statement made by learned Senior Counsel Shri Apte on instructions that the State would finalise the seniority list by the end of January, 2020 after considering the representations and objections to the provisional seniority list dated 3rd March, 2018, is accepted.

(iii) Needless to mention, it is open for the State Government to take an independent decision whether to make promotions on ad-hoc basis pending finalisation of seniority list.

(iv) Writ Petitions are partly allowed."

15. He draws our attention to an Original Application No.763/2003 (***Jotiba Tukaram Patil and others vs. The State of Maharashtra and others***), preferred by the promotees before the Maharashtra Administrative Tribunal (Tribunal) wherein, a judgment was delivered on 09.01.2004, in which, the Tribunal concluded as under:-

> *"The respondent No.1 is directed to finalise the seniority list of Deputy Collectors determining the inter-se seniority among promotee Deputy Collectors and directly recruited Deputy Collectors on the basis of the relevant rules and the direction given by High Court in W.P. No. 4548 of 1983 and also after deciding the objections raised by the applicants to the provisional seniority list within a period of six months from today. The respondent No.1,*

however, is at liberty to make selection for promotion on the basis of the provisional seniority list subject to condition that promotions given on the basis of such selection shall be subject to the inter-se gradation in the final seniority list. O.A. is disposed of accordingly. No order as to costs."

16. Two Miscellaneous Applications bearing Nos.188 and 215 of 2004 (***The State of Maharashtra vs. J.T. Patil and others***), were preferred before the Tribunal and the operative part of the earlier order dated 09.01.2004, was modified by arriving at the following conclusions in paragraphs 8 to 10:-

"8) *We find that the applicants, in their petition, relied upon the decision in W.P. No. 4548/1983 in order to make a point regarding the date of seniority in respect of direct recruits to be counted from the date of then actual taking over charge. It is true that the judgment passed in the said W.P. contains direction to prepare gradation list by determining the seniority of the promotee Dy. Collectors with effect from the date of their continuous officiation and in respect of direct recruits from the date of then actual taking over charge. But as pointed out by the learned Chief Presenting Officer the said direction is applicable only to the seniority list of the Dy. Collectors recruited against the vacancies during the period 1972-1975 when the Maharashtra Dy. Collectors (Recruitment, Fixation of Seniority and Confirmation) Rules 1977 were not framed. It is not the case of the original applicants that they were recruited during that specific period. Hence the principle laid down in the judgment passed in the said*

W.P.No. 4548/83 shall not be applicable to them. The Maharashtra Dy. Collectors (Recruitment, Fixation of Seniority and Confirmation) Rules 1977 specifically provide the manner in which the inter-se seniority between promotee and direct recruit Dy. Collectors to be determined. Hence we find that the reference to the judgment passed in W.P.No. 4548/83 in the operative part of the order passed by this Tribunal in O.A. No. 763 of 2003 is not relevant as far as determination of seniority of the original applicants is concerned. The order dated 9.1.2004 passed by this Division Bench of the Tribunal in the said O.A. therefore needs to be modified.

9) By filing M.A.No. 215 of 2004, the applicant (Original respondent State Govt.) has prayed for grant of additional six months time for finalizing the seniority list of Dy. Collectors. Considering the facts and circumstances, discussed above in respect of M.A. No. 188 of 2004, we of opinion that the request needs to be granted.

10) We therefore pass the following order.

ORDER

1. Both these miscellaneous applications are allowed.

2. The operative part of the order dated 9.1.2004 in O.A. No. 763 of 2003 is modified and shall read as follows:

"The respondent no. 1 is directed to finalize the seniority list of Dy. Collectors determining the inter-se seniority among promotee Dy. Collectors and direct recruit Dy. Collectors on the basis of relevant rules and also after deciding the objections raised by the applicants to the provisional seniority list within a period of six months from today. The respondent no. 1, however is at liberty to make selection for promotion on the basis of the provisional seniority list subject to condition that

promotions given on the basis of such selection shall be subject to the inter-se gradation in the final seniority list. O.A. is disposed of accordingly. No order as to costs".

3. Additional time of six months is granted to the applicant from today for implementing the order dated 9.1.2004, passed in O.A. No. 763 of 2003.

4. No order as to costs."

17. The above orders were challenged in Writ Petition No.7851/2004 (***Jotiba T. Patil and others vs. The State of Maharashtra and others***), (Civil Appellate Jurisdiction, Mumbai) and this Court delivered the judgment on 14.06.2018, wherein, it was concluded in paragraphs 23 to 27 as under:-

"*23] In fact, it is quite clear that the judgment of this court in Writ Petition No. 4548 of 1983 was in the context of appointees between 1972 to 1975 when there were no statutory rules for determination of interse seniority. This court, therefore, applying the principles laid down in S.B. Patwardhan (supra) formulated the principles to be applied in the meantime. After the 1983 Rules entered into force therefore, there was no question of once again falling back upon the principles in Writ Petition No. 4548 of 1983.*

24] Significantly, it is not even the case of the petitioners that they are appointees between 1972 and 1975 or that 1983 Rules do not apply to the determination of their seniority. Therefore, we see no merit in the attack on order dated 23.6.2004 based upon the restrictive parameters of review jurisdiction or

even otherwise on merits.

25] As noted earlier, all that the impugned judgments and orders had directed was the finalisation of the provisional seniority list in accordance with law and after taking into consideration the objections of the petitioners. Now that the seniority list has already been finalised and such finalised seniority list is not under challenge, we see no good ground to interfere with the impugned judgments and orders.

26] Since the finalised seniority list is not under challenge, we are not in a position to know whether such finalised seniority list is consistent with the rules as well as the law laid down by the Hon'ble Supreme Court in the decisions upon which reliance is placed by Mr.Rajadhyaksha. Suffice to note that there is no inconsistency between the directions issued by the MAT in the impugned judgments and orders and the decisions upon which reliance is placed by Mr. Rajadhyaksha. This is because as noted repeatedly, the impugned judgments and orders had merely directed the State to finalise the seniority list in accordance with law and after taking the petitioners objections.

27] For all the aforesaid reasons, we dismiss this petition. Rule is discharged. There shall be no order as to costs."

18. Shri Sapkal, therefore, contends that the seniority of the directly appointed Deputy Collectors (DDC/ direct appointees), will be from the dates of their entry in such direct appointment. Per contra, for the promotees (PDC), it will be from the dates of their regular promotion and not from the dates when

they were granted adhoc promotions, since the Maharashtra Deputy Collector (Recruitment, Fixation of Seniority and Confirmation) Rules, 1977, framed under Article 309 (Rules of 1977 or the 1977 Rules), were not adhered to. Their promotions will relate to their dates of actual entry as Deputy Collectors and not as adhoc Deputy Collectors.

19. In support of this submission, he relies upon a judgment delivered by the Honourable Supreme Court, on 28.09.2021, in ***Malook Singh and others vs. State of Punjab and others***, (three Judges Bench), Civil Appeal Nos.6026-6028/2021, ***[(2021) 7 SCR 1080 : 2021 SCC Online SC 876]***. He contends that this judgment crystallizes the law that adhoc service cannot be counted for conferring the benefits of seniority on such an employee. He specifically draws our attention to the observation of the Honourable Supreme Court in paragraph No.20, which reads thus:-

> *"20. The law on the issue of whether the period of ad hoc service can be counted for the purpose of determining seniority has been settled by this Court in multiple cases. In Direct Recruits (supra), a Constitution Bench of this Court has observed:*
>
> *"13. When the cases were taken up for*

hearing before us, it was faintly suggested that the principle laid down in Patwardhan case [(1977) 3 SCC 399: 1977 SCC (L&S) 391: (1977) 3 SCR 775] was unsound and fit to be overruled, but no attempt was made to substantiate the plea. We were taken through the judgment by the learned counsel for the parties more than once and we are in complete agreement with the ratio decidendi, that the period of continuous officiation by a government servant, after his appointment by following the rules applicable for substantive appointments, has to be taken into account for determining his seniority; and seniority cannot be determined on the sole test of confirmation, for, as was pointed out, confirmation is one of the inglorious uncertainties of government service depending neither on efficiency of the incumbent nor on the availability of substantive vacancies. The principle for deciding inter se seniority has to conform to the principles of equality spelt out by Articles 14 and 16. If an appointment is made by way of stop-gap arrangement, without considering the claims of all the eligible available persons and without following the rules of appointment, the experience on such appointment cannot be equated with the experience of a regular appointee, because of the qualitative difference in the appointment. To equate the two would be to treat two unequals as equal which would violate the equality clause. But if the appointment is made after considering the claims of all eligible candidates and the appointee continues in the post uninterruptedly till the regularization of his service in accordance with the rules made for regular substantive appointments, there is no reason to exclude the officiating service for purpose of seniority. Same will be the position if the initial appointment itself is made in accordance with

the rules applicable to substantive appointments as in the present case. To hold otherwise will be discriminatory and arbitrary…..

47. To sum up, we hold that

(A) Once an incumbent is appointed to a post according to a rule, his seniority has to counted from the date of appointment and not according to date of his confirmation. The corollary to 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 considering the seniority."

The decision in Direct Recruits (supra) stands for the principle that ad hoc service cannot be counted for determining the seniority if the initial appointment has been made as a stop gap arrangement and not according to rules. The reliance placed by the Single Judge in the judgement dated 6 December 1991 on Direct Recruits (supra) to hold that the ad hoc service should be counted for conferring the benefit of seniority in the present case is clearly misplaced. This principle laid down in Direct Recruits (supra) was subsequently followed by this Court in Keshav Chandra Joshi v. Union of India. Recently a two judge Bench of this Court in Rashi Mani Mishra v. State of Uttar Pradesh, of which one of us (Justice DY Chandrachud) was a part, observed that the services rendered by ad hoc employees prior to their regularization cannot be counted for the purpose of seniority while interpreting the Uttar Pradesh Regularization of Ad Hoc Appointment Rules. This Court noted that under the applicable Rules, "substantive appointment" does not include ad hoc appointment and thus seniority which has to be counted from "substantive appointment" would

not include ad hoc service. This Court also clarified that the judgement in Direct Recruits (supra) cannot be relied upon to confer the benefit of seniority based on ad hoc service since it clearly states that ad hoc appointments made as stop gap arrangements do not render the ad hoc service eligible for determining seniority. This Court speaking through Justice MR Shah made the following observations:

"36. The sum and substance of the above discussion would be that on a fair reading of the 1979 Rules, extended from time to time; initial appointment orders in the year 1985 and the subsequent order of regularization in the year 1989 of the ad hoc appointees and on a fair reading of the relevant Service Rules, namely Service Rules, 1993 and the Seniority Rules, 1991, our conclusion would be that the services rendered by the ad hoc appointees prior to their regularization as per the 1979 Rules shall not be counted for the purpose of seniority, vis-à-vis, the direct recruits who were appointed prior to 1989 and they are not entitled to seniority from the date of their initial appointment in the year 1985. The resultant effect would be that the subsequent re-determination of the seniority in the year 2016 cannot be sustained which was considering the services rendered by ad hoc appointees prior to 1989, i.e., from the date of their initial appointment in 1985. This cannot be sustained and the same deserves to be quashed and set aside and the seniority list of 2001 counting the services rendered by ad hoc appointees from the date of their regularization in the year 1989 is to be restored.

37. Now so far as the reliance placed upon the decision of this Court in the case of Direct Recruit Class II Engg. Officers' Assn. (supra), relied upon by the learned Senior Advocate appearing on behalf of the ad hoc

appointees is concerned, it is required to be noted that even in the said decision also, it is observed and held that where initial appointment was made only ad hoc as a stop gap arrangement and not according to the rules, the officiation in such post cannot be taken into account for considering the seniority. In the case before this Court, the appointments were made to a post according to rule but as ad hoc and subsequently they were confirmed and to that this Court observed and held that where appointments made in accordance with the rules, seniority is to be counted from the date of such appointment and not from the date of confirmation. In the present case, it is not the case of confirmation of the service of ad hoc appointees in the year 1989. In the year 1989, their services are regularized after following due procedure as required under the 1979 Rules and after their names were recommended by the Selection Committee constituted under the 1979 Rules. As observed hereinabove, the appointments in the year 1989 after their names were recommended by the Selection Committee constituted as per the 1979 Rules can be said to be the "substantive appointments". Therefore, even on facts also, the decision in the case of Direct Recruit Class II Engg. Officers' Assn. (supra) shall not be applicable to the facts of the case on hand. At the cost of repetition, it is observed that the decision of this Court in the case of Direct Recruit Class II Engg. Officers' Assn. (supra) was considered by this Court in the case of Santosh Kumar (supra) when this Court interpreted the very 1979 Rules."

The notification dated 3 May 1977 stated that the ad hoc appointments were made in administrative interest in anticipation of regular appointments and on account of delay

that takes place in making regular appointment through the concerned agencies. In this regard, the vacancies were notified to the Employment Exchange or advertisements were issued, as the case maybe, by appointing authorities. The appointments were not made on the recommendation of the Punjab Subordinate Service Selection Board. However, subsequently a policy decision was made to regularize the ad hoc appointees since their ouster after a considerable period of service would have entailed hardship. Thus, the initial appointment was supposed to be a stop gap arrangement, besides being not in accordance with the rules, and the ad hoc service cannot be counted for the purpose of seniority."

20. Shri Sapkal has then drawn our attention to Rule 2(b), 2(e), 2(i), 2(n), Rule 4, Rule 5, Rules 8 to 10, Rule 12 and Rule 13 of the Maharashtra Deputy Collectors (Recruitment, Fixation of Seniority and Confirmation) Rules, 1977, which are as under:-

"2. Definitions. In these rules, unless the context otherwise requires,-

"(b) "Commission" means the Maharashtra Public Service Commission;"

"(e) "deemed date" has the meaning assigned to it in rules 7 and 13;"

"(i) "fortuitous service" means that service which is rendered by a person during the period commencing on the date of his actual continuous officiation in a cadre and ending on the deemed date of continuous officiation in that cadre (such deemed date being later than

the date of the actual continuous officiation of such person in the said cadre);"

"(n) "select list" means the initial list of officers who are fit to be appointed as Tahsildars or, as the case may be of Tahsildars who are fit to be appointed as Deputy Collectors, in the order of seniority assigned to them in such respective list (each such list being drawn up by Government in consultation with the Commission)."

"4. Mode of recruitment to post of Deputy Collector.-

(1) Appointment to the post of Deputy Collector may be made either by nomination in the manner provided by rule 5 or by promotion of Tahsildars as provided by rule 10 or by transfer on deputation of officers holding the posts of Under Secretary to Government:
Provided that the appointment by nomination shall be made in such manner as to ensure that the total number of directly recruited Deputy Collectors in the cadre of Deputy Collectors shall not, at any time, be less than 35 per cent, and not more than 50 per cent of the total number of permanent posts in that cadre.

(2) For the purpose of complying with the proviso to sub-rule (1) Government shall determine in advance the number of nominations to be made in each year."

"5. Manner of appointment by nomination.-

(1) Appointment by nomination shall be made upon the result of a competitive examination to be held by the Commission in accordance with the rules made by Government in that behalf.

(2) To be eligible for appearing at any such examination, a candidate,-
(a) shall hold a degree of a statutory University or a qualification recognised by Government as equivalent thereto;

(b) shall have adequate knowledge of Marathi for the purpose of reading, writing and speaking fluently, in that language;
(c) shall not be less than 19 years and more than 28 years) of age on 1st day of April of the year following the year in which the posts are advertised by the Commission:"

"8. Preparation of combined seniority list of Tahsildars:-

(1) In each year, in accordance with the seniority of all the Tahsildars determined under sub-rule (6) of rule 7, a combined provisional seniority list of Tahsildars serving in all the revenue Divisions in the State (hereinafter referred to as "the provisional seniority list of Tahsildars") who have put in continuous service of five years or more, shall be prepared by Government in Form I showing their inter-se seniority as on the 1st day of April of that year.

(2) After the preparation of such seniority list under sub-rule (1), a copy thereof shall be kept by Government for inspection in the office of every Commissioner and of every Collector by the persons interested therein. Government shall also issue a press note announcing that copies of the provisional seniority list of Tahsildar have been kept for inspection as aforesaid and calling upon persons concerned to submit to the Commissioner of the Division concerned, any objections or suggestions if any, to such list within a period of sixty days from the date of the press note.

(3) Every Commissioner shall forward the suggestions and objections, if any received by him under sub-rule (2) to Government with his remarks within fifteen days from the last day of the period specified in the press note for submission of objections and suggestions.

(4) Government shall, after considering the suggestions and objections and the remarks of

all the Commissioners, prepare the final seniority list of Tahsildars.

(5) A copy of such final seniority list of Tahsildars shall be kept by Government in the office of every Commissioner and of every Collector for information of the persons interested therein. Government shall also issue a press note announcing that copies of the final seniority list of Tahsildars have been kept as aforesaid."

"9. Constitution of Selection Committee and preparation of select list of Tahsildars:-

(1) For the purpose of preparing a select list of Tahsildar, Government shall constitute a Selection Committee consisting of-

(1) Secretary, Revenue and Forests Department of Government or where there are two or more Secretaries in that Department, one of them nominated by Government.

...Chairman

(2) Secretary (Personal) in the General Administration Department of Government.

...Member

(3) Two Revenue Commissioners nominated by Government (one of them shall be belonging to Backward Classes, if available).

...Members

(4) Deputy Secretary in-charge of the subject in the Revenue and Forests Department.

...Member/ Secretary

(2) The Committee shall meet in the month of September or as soon as possible thereafter every year; and subject to the provisions of sub-rule (5), prepare a select list as provided in this rule of Tahsildars fit to be promoted to the cadre of Deputy Collectors.

(3) The Committee shall consider the cases of all Tahsildars including,-

(i) those whose names are already included in the select list prepared earlier but orders

regarding whose promotion to cadre of Deputy Collectors have not been issued till the date of the meeting,

(ii) those who, after being provisionally promoted to the cadre of Deputy Collectors, have been reverted as Tahsildars, and

(iii) those whose names are included in the final seniority list of Tahsildars prepared under sub-rule (4) of rule 8 in the order in which their names appear in that list.

(4) The number of Tahsildars to be included in the select list shall be, as nearly as may be, equal to the vacancies in the cadre of Deputy Collectors which are likely to arise during the next twelve months (i.e. from 1st September to 31st August).

(5) The Committee shall take into consideration all confidential reports about the officer in the cadre of Tahsildars and then assess the merit of that officer.

(6) Those officers who are considered to possess outstanding merit, exceptional ability or positive merit and have achieved tangible result and show promise of being able to discharge efficiently the duties and responsibilities of a Deputy Collector shall alone be ranked amongst the first 25 per cent of the total number of officers to be included in the select list. The officer to be ranked thereafter shall be selected from amongst those who are considered fit for the post of a Deputy Collector.

(7) The select list drawn up by the Committee shall be submitted to Government together with all the relevant material including the confidential reports about the officers concerned. Government shall, thereafter, in consultation with the Commission, determine the final select list of Tahsildars fit to be promoted as Deputy Collectors."

"10. Provisional promotion to Deputy Collector's cadre:-

(1) The Tahsildars whose names are included in the final select list determined by Government under sub-rule (7) of rule 9 shall be provisionally promoted to a post in the cadre of Deputy Collectors in the order of their ranking in that list as and when vacancies occur in that cadre:

Provided that, where such final select list is exhausted and the exigencies of administration require the vacancies in that cadre to be filled up immediately, Government may, purely as a stop gap arrangement, appoint,-

(i) where the fresh select list is yet to be prepared, Tahsildars included in the final seniority list of Tahsildars prepared under rule 8 in the order of their seniority in that list and who are considered fit by it for promotion to the cadre of Deputy Collectors after considering up-to-date confidential reports about them,

(ii) where the Committee has drawn up a select list but Government has not determined the final select list in consultation with the Commission as provided in sub-rule (7) of rule 9, the Tahsildars included in the select list drawn by the Committee in the order of their ranking in that list.

(2) The appointment made as a stop-gap arrangement under the proviso to sub-rule (1) shall be deemed to be a regular provisional appointment under sub-rule (1) when the officer in question is included in the final select list determined by Government under sub-rule (7) of rule 9. Where the officer appointed as a stop-gap arrangement under the proviso to sub-rule (1) is not included in such final select list, he shall be reverted immediately after such final select list is determined by Government under sub-rule (7) of rule 9.

(3) The promotion under sub-rule (1) or under sub-

rule (2) shall continue to be provisional until the officer has been considered fit to be continued in the cadre of Deputy Collectors in the review made under rule 12:

Provided that it shall be competent to Government to revert any Deputy Collector even before the completion of the review under rule 12 if his work is considered unsatisfactory or for any other reason considered sufficient by Government for such reversion; and in such cases, the Commission shall be consulted within six months of the reversion."

"12. Review of Duty Collectors promoted provisionally:-

(1) Whenever the Selection Committee constituted under rule 9 meets as required by sub-rule (2) of that rule, it shall also consider the cases of the officers who have been provisionally promoted as Deputy Collectors under rule 10 and have so officiated for a continuous period of not less than three years for determining whether they are fit to be continued in the cadre of Deputy Collectors.

(2) The Committed shall, after considering the confidential reports of the officers for the period during which the officers had officiated in the cadre of Deputy Collectors prepare a list of officers who are fit to be continued in the Deputy Collectors' cadre and also a list of officers who are not so fit.

(3) The two lists drawn up by the Committee under sub-rule (2) shall be submitted to Government together with all the relevant material including all the confidential reports about the officers concerned. Government will, therefore, in consultation with the Commission, finalise the two lists.

(4) The officers who are not found fit for continuing in the cadre of Deputy Collectors

shall be reverted immediately, and their names removed from the select list determined by Government under sub-rule (7) of rule 9."

"13. Principles according to which seniority of Deputy Collectors shall be determined:-

(1) The seniority inter-se of the promoted Deputy Collectors shall be in the same order in which their names appear in the final select list determined by Government under sub-rule (7) of rule 9:

Provided that the seniority of the promoted Deputy Collectors appointed as a stop- gap arrangement under the proviso to sub-rule (1) of rule 10, shall be deemed to be provisional till his appointment becomes regular under sub-rule (2) of that rule.

(2) Where the dates of continuous service of the promoted Deputy Collectors in the cadre of Deputy Collectors are not chronologically in conformity with their inter-se seniority as provided in sub-rule (1) due to the seniority of any Deputy Collector being revised subsequent to his promotion as Deputy Collector in order to remove an injustice done to him in fixing his seniority in the cadre of Deputy Collectors or Tahsildars or, as the case may be, Awal Karkuns. or Naib Tahsildars, or for rectifying an error made in the fixation of such seniority. the dates of continuous service as Deputy Collectors shall be assigned to the promoted Deputy Collectors in such manner as to be chronologically in conformity with their order of seniority (that is to say, the senior officer will have the earlier date of continuous service than his junior in the seniority list). The dates so assigned shall be called the deemed dates" of continuous service in the Deputy Collectors' cadre, and shall be taken into consideration for the purpose of this rule.

(3) The inter-se seniority of the directly recruited

Deputy Collectors, selected in one batch by the Commission shall be determined in accordance with the order of preference recommended for them by the Commission irrespective of the dates of their joining the cadre of Deputy Collectors, subject to the condition that they join the cadre within one month of their appointment order or, where an extension of the period for joining the cadre is sanctioned by Government, within such extended period; and if they join such cadre after the expiry of the period of one month or as the case may be, of the extended period, then such seniority shall be determined according to the dates of their joining the cadre.

(4) Where the dates of appointment of directly recruited Deputy Collectors are not chronologically in conformity with their inter-se seniority as provided in sub-rule (3), such dates shall be assigned to them in such manner as to be chronologically in conformity with their order of seniority. The dates so assigned shall be called "the deemed dates" of appointment on probation of the directly recruited Deputy Collectors and shall be taken into consideration for the purposes of this rule.

(5) After having determined the seniority of promoted Deputy Collectors and directly recruited Deputy Collectors in the manner provided in sub-rules (2), (3), (4) and (5), Government shall determine the seniority of all the Deputy Collectors according to the date of continuous service in the cadre cf Deputy Collectors or, as the case may be, according to the deemed dates assigned to them under sub-rule (2) or sub-rule (4):

Provided that,

(a) any service rendered in a fortuitous appointment shall be excluded,

(b) where the dates of continuous service or, as the case may be, of joining the cadre of

Deputy Collectors of any two or more officers are identical, the officer senior in age shall be considered as senior for the purpose of determining such seniority."

21. He then contends that, under Rule 8, the 01st day of April of a particular year is the cut off date for completion of five years by a Tahasildar. Under Rule 9(1), the selection committee is to be constituted by the Government. The committee has to meet in the month of September of each year or as soon as possible thereafter, thereby mandating the committee to fulfill this requirement prior to 31st December of each year, considering the specific language set out in sub-rule (2). Rule 3 provides for cases of the Tahasildars to be considered in view of sub clauses (i) to (iii). Even those Tahasildars, who were provisionally promoted to the cadre of the Deputy Collectors and have been reverted and those whose names are included in the final seniority list of Tahasildars prepared under Rule 8(4) in the order in which their names appear in that list, can be considered to be fit for promotion.

22. He, therefore, contends that the two Petitioners Smt.Chandrakar and Shri Kulkarni, could not have been

appointed as Deputy Collectors on 09.07.1999, since they completed five years as Tahasildars on 01.03.1999 and the committee could not have convened a meeting to consider their cases prior to September of 1999, under Rule 9(2). So also, under Rule 9(4), the probable vacancies which are likely to arise during the next twelve months i.e. from 1st September of that year to 31st August of the next year, are also to be considered. This could not have been done as in July,1999.

23. He, then, submits that Rule 9(7) provides for submitting the select list drawn by the committee, to the Government along with relevant material. The Government is duty bound by a mandate, in view of the word “shall”, to consult the Commission and determine the final select list of Tahasildars fit to be promoted as Deputy Collectors. Under Rule 10(1), the Tahasildars whose names are included in the final select list determined under Rule 9(7), are to be provisionally promoted to a post in the cadre of Deputy Collector in the order of their ranking in that list, as and when the vacancies occurred.

24. He then draws our attention to the proviso below

Rule 10(1), which permits the Government to appoint the Deputy Collectors purely as a stop-gap arrangement, if the final select list is exhausted and the exigencies of administration require the vacancies in that cadre to be filled up immediately. He, therefore, relies specifically on Rule 10(2) and contends that the appointment made as a stop-gap arrangement under the proviso to sub rule (1) of Rule 10, shall be deemed to be a regular provisional appointment under sub-rule (1), only when the officer in question is included in the final select list determined by the Government under Rule 9(7). When the officer appointed as a stop gap arrangement is not included in the final select list, he has to be reverted immediately after such final select list is determined by the Government under Rule 9(7). He then draws our attention to Rule 10(3) by which, the promotion under sub-rule (1) or (2), would continue to be provisional until the officer is considered fit to be continued in the cadre of Deputy Collectors, in the review made under Rule 12.

25. He then refers to Rule 12 which pertains to review of PDC who are promoted provisionally. Sub rule (1) mandates the selection committee to consider cases of officers who have

been provisionally promoted as Deputy Collectors under Rule 10 and have officiated for a continuous period of not less than three years for determining whether they are fit to be continued in the cadre of Deputy Collectors. Sub rule (2) mandates the Committee to prepare one list of officers provisionally appointed as Deputy Collectors, who are fit to be continued in the Deputy Collector's cadre and also prepare a second list of officers, who are not so fit. Sub-rule (3) mandates the committee to present two lists to the Government, together with all the relevant material. The Government, thereafter, would consult the Commission and finalize the two lists. Under sub-rule (4), officers who are not found fit for continuing in the cadre of Deputy Collectors, are to be reverted immediately and their names are to be removed from the select list prepared under Rule 9(7).

26. Rule 13(1) mandates that the seniority inter-se the promoted Deputy Collectors, shall be in the same order in which their names appear in the final select list determined by the Government under Rule 9(7). The proviso below sub-rule (1) indicates that the seniority of the promoted Deputy Collectors,

appointed as a stop-gap arrangement under the proviso below Rule 10(1), shall be deemed to be provisional till the appointment becomes regular under Rule 10(2).

27. Shri Sapkal specifically submits in relation to the cases in hand, that there was no consultation by the Government with the Commission as mandated under Rule 9(7). Therefore, there is no final select list prepared by the Government. He points out that the Government has admitted this fact before the Tribunal and even before this Court.

28. The learned Advocate Shri Katneshwarkar, representing the Government, when called upon, submits that the Government has admitted this aspect and there was no consultation by the Government with the Commission under Rule 9(7), before finalizing the list. Shri Sapkal, therefore, reiterates that the adhoc appointment of these two Petitioners Smt.Chandrakar and Shri Kulkarni, w.e.f. 09.07.1999, as Deputy Collectors, is not as per the approved list under Rule 9(7) and such adhoc promotions are in violation of Rule 9(2) and 9(4).

29. Shri Sapkal has referred to the impugned judgment delivered by the Tribunal, dated 26.08.2022. Primarily, he has contended that, both the learned members of the Bench have taken 'almost contradictory' views. Though the learned Member (Administrative) has signed the portion of the judgment (86 pages), authored by the learned Member (Judicial), he has added his observations, analysis and conclusions (11 pages), which are contrary to the view taken by the learned Member (Judicial).

30. He has referred to the text of the portion authored by the learned Member (Administrative), which we are referring to, (in brief), as follows:-

(a) In paragraph 1, it is noted that all the parties are united/ in agreement on the aspect of the applicability of the 1977 Rules.

(b) In paragraph 2, he has referred to the conclusion that the Applicants before the Tribunal had entered the cadre of Deputy Collectors as "*promotee Deputy Collectors" (PDC).* They have claimed seniority in the cadre of Deputy Collectors as per their dates of appointments.

(c) The directly appointed Deputy Collectors (DDC)

have contended that the initial appointment of the Applicants has been on adhoc basis and fortuitous in nature and under the 1977 Rules in the light of the judgment of the Honourable Supreme Court, they are fit to be reverted to their parent cadre of Tahasildars.

(d) The State Authorities admitted that the initial appointment of the Applicants had not been strictly in accordance with the 1977 Rules and that a sincere effort was made through the process of preparation and publication of the combined seniority list of officers in the cadre of Deputy Collectors for the period 01.01.1999 to 31.12.2003, by assigning the DDC their due seniority position and at the same time, regularizing the adhoc and fortuitous services rendered by the Promotee Deputy Collectors (PDC).

(e) The issue of locus-standi of the Applicants has been raised in explicit terms by the Respondents individuals (not the State Authorities) and it is necessary to examine the said issue before going to the merits of the case.

(f) Admittedly, the Applicants have not placed on record a copy of the "*final combined seniority list*" for the cadre of Tahasildars, which was prepared and published by the

Respondent Authorities as per Rule 8(4) and 8(5) for the purposes of drawing a select list of Tahasildars for promotion to the post of Deputy Collectors, by the Selection Committee constituted under Rule 9(1). So also, the Applicants have not placed on record the "*final select list*" prepared by the Government under Rule 9(7), though the Applicants claim that their names were included in such a list. The State of Maharashtra has not taken a clear stand. This last sentence is against the record since the State Government has filed an affidavit before the Tribunal stating therein that such a "*final combined seniority list*" and the "final select list", was never prepared by the Government.

(g) An inference can be drawn that the names of the Applicants were not eligible for inclusion in the final combined seniority list prepared under Rule 8(4), for placing the same for consideration of the selection committee for their promotions to the cadre of Deputy Collectors. The individual Respondents had asserted that the Applicants had not completed a minimum of five years of service in the cadre of Tahasildars at the time of the preparation of the combined seniority list.

(h) There is no evidence to show that the names of the

Applicants in both the proceedings, were eligible to be incorporated in the said final select list prepared under Rule 9(7). It was contended by the individual Respondents that Rule 9(7) was not complied with by Respondent No.1 and which is admitted in it's Written Statement.

(i) In the specific view of the learned Member (Administrative), that the seniority inter-se the PDC, could not be an issue which could be raised by the DDC. However, a DDC cannot be excluded from raising objections in respect of inclusion of the names of the PDC in the final combined seniority list as per Rule 8(4), on the ground that such a PDC did not meet the eligibility criteria under Rule 8(1). The names of only such Tahasildars could be considered for inclusion in the select list prepared under Rule 9(7), if they are eligible to be included in the final combined seniority list prepared under Rule 8(4).

(j) The learned Member (Administrative) cast issue No.1 as "*Whether the Applicants in TA-1 and TA-2 were qualified to be included in the State level final combined seniority list of Tahasildars as per the provisions of Rule 8(1) of the Rules of 1977?"*

While answering the said issue, it was concluded that the meeting of the Departmental Promotion Committee (DPC) cannot be construed to mean that the Selection Committee constituted under Rule 9(1) is deemed to have convened a meeting and the meeting of the Selection Committee has to be held in the manner prescribed under the 1977 Rules.

(k) Issue No.3 (there is no issue No.2 in the order) reads as "*Whether the names of the Applicants in TA-1 and TA-2 had been included in the select list of Tahasildars as per provisions of Rule 9 of the Rules of 1977?"*

This issue was answered by concluding that the names of these four Applicants had not been included in the select list of Tahasildars, if any, as per Rule 9(3)(iii), since their names did not appear in the final combined seniority list of Tahasildars which has to be prepared under Rule 8(4). Therefore, it was concluded that the four Applicants do not have the locus-standi to contest the Transfer Applications.

(l) Issue No.4 reads as "*Whether the appointment of the Applicants listed in TA-1 and TA-2 can be classified as a stop-gap arrangement as per provisions of Rule 10(1) of the Rules of 1977?"*

This was answered by concluding that the provisos (i) and (ii), to Rule 10(1), provide for filling up the vacancies in the cadre of Deputy Collectors purely as a stop-gap arrangement. However, proviso (i) indicates that only an officer in the cadre of Tahasildar whose name has been included in the combined final seniority list prepared under Rule 8(4), could be appointed as a Deputy Collector on a stop-gap basis. It was concluded that the Applicants were not eligible for appointment even on stop-gap basis on the post of Deputy Collector under proviso (i) of Rule 10.

(m) Issue No.5 reads as "*Whether the names of Applicants included in select list by approval of Government with prior consultation with MPSC as per provisions of Rule 9(7) of the Rules of 1977?*"

It was concluded that no select list was prepared under Rule 9(7), which mandates consultation with the MPSC.

(n) Issue No.6 reads as "*Whether review of services of the Applicants in TA-1 and TA-2 had been duly carried out as per provisions of Rule 12 of the Rules of 1977?*"

It was concluded that there was no review of services of the Applicants as was required to be carried out as per

Rule 12.

(o) Issue No.7 reads as "*How the seniority of Applicants in TA-1 and TA-2 is to be determined under provisions of Rule 13 of the Rules of 1977?"*

It was concluded that the impugned seniority list prepared and published by the State, was not in accordance with the relevant provisions under the 1977 Rules. A combined seniority list of DDC and PDC cannot be prepared in accordance with Rule 13, without following the due procedure for regularization of the recruitment of the Applicants and similarly situated other PDC. In the absence of any provision in this regard in the Rules of 1977, the case law may be referred to which permits regularization of recruitment which is irregular ab-initio.

(p) Issue No.8 reads as "*As the Applicants in TA-1 and TA-2 have continued in cadre of Deputy Collectors for continuous period of 20 to 22 years, how does inaction on part of Respondent No.1 and 2 to take action as per relevant rules under the Rules of 1977 affect the right of the Applicants to claim and get seniority w.e.f. their respective dates of appointments in the cadre of Deputy Collectors vis-a-vis the seniority of direct recruit Deputy Collectors?"*

It was concluded that though the Rules mandate that the Applicants need to be reverted back to the cadre of Tahasildar, this may amount to turning the clock backwards which may lead to multiple administrative complications. On the other hand, conceding to the demands of the Applicants to grant them seniority w.e.f. their date of joining the cadre of Deputy Collectors, may amount to injustice to the DDC. Regularization of the PDC in the combined seniority list seems to be the only option which has been apparently accepted by most of the PDC, except these four Applicants who stand on a weak ground of locus-standi.

(q) Issue No.9 reads as "*Whether the exact number of posts in the cadre of Deputy Collectors is material to decide the claims of four Applicants?"*

It was concluded that the four Applicants do not have the locus standi and, therefore, the total number of posts in the cadre of Deputy Collectors may not be material for deciding the Applications filed by the Applicants. However, the Respondents may, in order to be fair to all the officers in the said cadre, re-confirm the data depicted in the matrix enclosed along with the circular issued by the Government, Revenue and Forest

Department bearing No.SNT-22/97/E-1A-Mantralay dated 31.12.2020, with special reference to creation of posts of the Deputy Collectors and it's total number along with the break-up of temporary and permanent posts.

(r) While concluding in a long paragraph, the learned Member (Administrative) has, finally, held that:-

> "*On one hand, we have recorded unambiguous finding that the method which has been adopted and applied by the respondent no.1 while determining the impugned seniority list is, strictly speaking, not in precise conformity with the provisions under "the Rules of 1977". On the other hand, we also observe that prima facie, the applicants do not seem to have locus-standi in the present matter. The argument put forth by the learned Special Counsel for private respondent that the applicants having been promoted in violation of rules need to be reverted back to their parent cadre of Tahasildars, can be said to be administratively impractical in view of the fact of long service rendered by the applicants. These two sides of the matter put up in a dilemma as to how a legally valid, workable resolution to the problem can be worked out without letting the matter to stale further. From above analysis, it is also inferred by me that the issue of seniority position of the original applicants cannot be decided by the provisions of the Recruitment Rules, 1977 and passing an order in the present matters requires superior learning and ability to analyze the judgments delivered by Hon'ble High Courts and Hon'ble Apex Court touching upon similar aspects of service matters. Therefore, after putting my views on record as above for consideration, I may prefer to concur with*

operative part of the order passed by Hon'ble Justice P.R. Bora, the Vice Chairman."

31. The learned Senior Advocate Shri Sapkal submits that though the learned Member (Judicial) and the learned Member (Administrative), have concurred as regards the fact that the select list was not in accordance with the Rules and there was no consultation with the Commission, the learned Member (Judicial) has held that the said fact could be termed as an irregularity. Per contra, the learned Member (Administrative) has concluded that if there is no final combined seniority list and the select list, as is required by law, the PDC will have to suffer the consequences. On the issue of the manner in which the PDC should now be dealt with, the learned Member (Judicial) has concluded that they cannot be made to suffer the consequences. He has directed to delete the remark "*fortuitous service",* against the PDC who are at Sr.Nos.582 to 700. Per contra, the learned Member (Administrative) has concluded that these PDC cannot be in the seniority positions and, therefore, being in a dilemma, he would prefer to concur with the learned Member (Judicial). Shri Sapkal, therefore, submits that though both the Members of

the Bench are unanimous as regards the illegality in the final seniority list and the select list, both have taken a divergent view.

32. In paragraph 23 of his judgment, the learned Member (Judicial) has held that the DPC was convened on 15.04.1999 and the promotion orders are issued in the month of July, 1999. To this extent, there is reason to believe that there is some deviation from the Recruitment Rules. The said minor contravention has to be treated as an irregularity and it would be unjust and unfair to treat the appointments by way of promotion granted to the four Applicants as being illegal, after a period of 20 years.

33. In paragraph 26, it is held that a reasonable inference can be drawn that the inclusion of these Applicants in the select list in the cadre of Deputy Collectors, cannot be held to be illegal. Though a review meeting under Rule 12 is not held, the State has taken a conscious decision that the review meeting is deemed to have been convened as these four Applicants were continued as PDC, admittedly without a review meeting.

34. In paragraph 29, it is held as under:-

> *"29. It is true that sub-rule 9 of Rule 7 provides for consultation with MPSC while determining the seniority list drawn up by the committee of the Tahsildars fit to be promoted as Deputy Collectors. It is also true that there is nothing on record to show that the MPSC was consulted by the State before determining the final select list of Tahsildars under sub-rule 7 of Rule 9. However, question arises whether such objection assumes any value and significance after the period of more than 20 years of the alleged action. According to us, the delay caused has rendered the objection raised on behalf of private respondents redundant. Moreover, as has been held by Hon'ble Supreme Court in the case of State of U.P. vs. Manbodhan Lal Shrivastava (cited supra) absence of consultation with MPSC can be treated as irregularity and not illegality. The said irregularity can be cured as held by Hon'ble Supreme Court in the case of Ajay Kumar Singh vs. State of Uttar Pradesh (cited supra) through prospective consultation. The promotions granted in favour of the applicants and inclusion of their names in the select list determined under Rule 9(7), therefore cannot be negated on the ground of 'non-consultation' with MPSC."*

35. The learned Member (Judicial) has relied upon an earlier view taken by the Tribunal vide judgment dated 17.04.2008, in O.A. No.526/2004, from paragraph Nos.31 to 41 wherein, the Tribunal concluded in paragraph 41 that "*There is*

no difficulty for us to hold that cadre includes both permanent and temporary posts."

36. In paragraph 49, it is held that "*In addition to permanent posts of 514, definitely some temporary posts were there in existence meaning thereby, that cadre strength at the relevant time was more than 514 and the Applicants in both these Applications were part of the cadre of Deputy Collectors."* In paragraph 50, he concludes that "… *Though in the said orders, it has been stated that the promotions so granted are purely temporary and further that the applicants may not be entitled to claim any benefit on the basis of the said temporary promotion like seniority etc., it is nowhere mentioned in the said order under which provision of the Recruitment Rules such promotions were given. It is not mentioned in the said orders that the promotions granted in favour of the applicants are by way of stop-gap arrangement or on adhoc basis."*

37. In paragraph 52, it is held as under:-

> "*52. We have reproduced the proviso to Sub-rule (1) of Rule 10 hereinbefore. We have also noted in what circumstances the promotions can be*

granted by the Government under the said provision. In the affidavit in reply submitted on behalf of respondent no. 1 it is not its case that at the time when the applicants and other 94 officers in the cadre of Tahsildars were promoted to the post of Deputy Collector, there was any administrative exigency. Respondent no. 1 has also not provided any such information or has raised any such plea that at the time when the applicants were promoted, the final select list prepared under Sub-rule 7 of Rule 9 was already exhausted. It is also not disclosed by respondent No. 1 whether administrative exigency was of the nature that the vacancies in the cadre of Deputy Collectors were to be filled up immediately. Respondent No. 1 has further not provided any information whether names of the applicants for promoting them to the post of Deputy Collector under the said provision were required to be taken from the final select list of the Tahsildars prepared under Rule 8. It is also not stated by respondent No. 1 whether the names of the applicants were selected from the select list which was awaiting its determination under Sub-rule 7 of Rule 9 by the Government. It is undisputed that once promoted to the post of Deputy Collector, the applicants did not suffer reversion to any lower cadre and they have been discharging their duties uninterruptedly on the promoted post of Deputy Collector."

38. Shri Sapkal submits that the learned Member (Judicial) has erred in concluding in paragraph 53 that the PDCs are not covered by Rule 10(1), which provides for temporary promotions as a stop-gap arrangement. He held that Respondent

No.1/State does not take a stand that these PDCs are covered by Rule 10(1). According to Shri Sapkal, this view is contrary to the view taken by the Bombay High Court in the case of one of these Applicants, namely, Smt.Samiksha Ramakant Chandrakar, who had preferred Writ Petition No.11367/2019. He points out the judgment dated 18.12.2019, more specifically paragraph Nos.25, 26, 27, 28 and 29 (operative part), reproduced above.

39. He then submits that the learned Member (Judicial) has given a cursory glance to a directly applicable judgment delivered by the Honourable Supreme Court in ***Malook Singh (supra)*** and has brushed aside the ratio laid down in the said judgment by holding that it would not apply to the facts of the case. Similarly, three judgments of the Supreme Court, viz. (i) ***Union of India and another vs. Prof. S.K. Sharma, AIR 1992 SC 1188***, (ii) ***Excise Commissioner, Karnataka and another vs. V. Sreekanta, AIR 1993 SC 1564*** and (iii) ***P.K. Singh vs. Bool Chand Chablani and others, AIR 1999 SC 1478***, have been brushed aside with a passing remark that "*It may not be necessary to elaborately discuss each of the said judgment, for the reason that in all these judgments the principle laid down is*

same that the 'services rendered on adhoc basis cannot be considered for the purpose of reckoning seniority'." He, therefore, submits that the conclusions drawn in paragraph 58, that it is not established that the initial appointment of the four Applicants was not in accordance with the Rules of Recruitment, is a perverse finding. After having concluded that Rule 9(7) of the Rules has been violated, it cannot be held that there is no illegality in the promotions of the PDC. This is apparently a perverse conclusion.

40. Shri Sapkal has expressed astonishment that though the Tribunal has concluded that the four Applicants have no locus standi to file the Applications and the said Applications need not be entertained, it has effectively granted relief and directions, without quashing the final seniority list dated 31.12.2020. Once the Tribunal concludes that the Applicants had no locus standi to assail the impugned notification, it was not necessary for the Tribunal to deal with the merits of the claims of these four Applicants.

Submissions of the learned Senior Advocate Shri Apte

41. Shri Apte, the learned Senior Advocate has appeared as a Special Counsel for the State of Maharashtra. He submits that the dispute is regarding the seniority inter-se the DDC and PDC. Rule 4 provides for a quota. The DDC should not be less than 35% and more than 50% in the cadre of Deputy Collectors. The PDC, subject to the compliance of the Rules insofar as finalization of the seniority and the select list, should not exceed 65% and should not be less than 50%. The adhoc promotion orders resulted in the PDC exceeding 65%. Such excess in quota is to be termed as "fortuitous" appointment. It is also called as a stop-gap appointment.

42. Shri Apte has relied upon ***Keshav Chandra Joshi and others vs. Union of India and others, 1992 Suppl. (1) SCC 272***, more particularly paragraph Nos.18 to 28 and 34 which read as under:-

> *"18. A close reading of the fasciculus of rules clearly posits that recruitment as Assistant Conservator of Forest shall be from two sources, namely, by direct recruitment and by promotion of permanent Forest Rangers of the Subordinate Forest Service. Qualifications have been provided for recruitment. The direct recruit, on selection by the Public Service Commission is required to undergo training for two years in the college as a part of*

the selection and on obtaining diploma, the Governor is to appoint him to the substantive post of Assistant Conservator of Forest on probation. The service of the direct recruits is to be counted from the date of discharging the duties of the post and on successful completion of the probation within two years or extended period and passing the tests and on confirmation thereof by the Governor, he becomes a member of the service in substantive capacity. Similarly the promotees shall be recruited in accordance with Rule 5(b) and the procedure prescribed in Appendix 'B'. The Chief Conservator of Forest would draw up the list of permanent Forest Range Officers eligible for promotion strictly on the basis of merit. The Committee headed by the member of the Public Service Commission would interview them and prepare the list of the selected candidates on the basis of merit and ability, which would be forwarded to the government. On receipt thereof the Governor would appoint the Forest Range Officers as Assistant Conservator of Forest on probation in terms of the ratio prescribed in Rule 6. The selection shall be based on merit and ability. The seniority of Forest Rangers inter se is to be considered only where the merit and ability as Forest Rangers are approximately equal. Thus even the juniormost meritorious Forest Range Officer would steal a march over his seniors and would earn his seniority as Assistant Conservator of Forest. The promotee shall also be on probation for a period of two years and shall also have to pass the prescribed tests unless exempted. On successful completion and the Governor after satisfying himself that the appointee is also otherwise fit to be confirmed, makes an order. Then only the promotee becomes a regular member of the service in a substantive capacity.

19. *<u>The heart of the controversy lies in the question as to when a person is appointed to a post in the</u>*

service in a substantive capacity within the meaning of Rule 3(h) read with Rules 5 and 24 of the Rules. Under Rule 5 read with Rule 3(h) a member of the service means a person, be it direct recruit under Rule 5(a) or promotee under Rule 5(b), appointed in a substantive capacity to the service as per the provisions of the rules. In order to become a member of the service he/they must satisfy two conditions, namely, the appointment must be in substantive capacity and the appointment has to be to the post in the service according to rules and within the quota to a substantive vacancy. There exists marked distinction between appointment in a substantive capacity and appointment to the substantive post. Therefore, the membership to the service must be preceded by an order of appointment to the post validly made by the Governor. Then only he/they become member/members of the service. Any other construction would be violation of the Rules.

20. The narrative of facts and attendant circumstances would indicate that the Government at no point of time abandoned direct recruitment under Rule 5(a), nor omitted to fix inter se seniority. No blame in this regard should lie at the doors of the government as due to recourse to judicial process this situation crept up. It is not the case of the promotees that Government held out any promise that the promotees would be regularised from the respective dates of promotion. On the other hand the government's positive act of adjusting the promotees in excess of the quota under Rule 6 in the vacancies that arose in the succeeding years belie such a situation.

21. From the above background two questions would emerge: (i) as to when promotees become members of the cadre of Assistant 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 and de hors Rule 5(b) read with Appendix 'B'.

22. *In a democracy governed by rule of law, it is necessary for the appropriate governance of the country that the political executive should have the support of an efficient bureaucracy. Our Constitution enjoins upon the executive and charges the legislature to lay down the policy of administration in the light of the directive principles. The executive should implement them to establish the contemplated egalitarian social order envisaged in the preamble of the Constitution.*

23. *It is seen that the appointments of the promotees were made in batches yearwise. The rule postulates that appointment shall be strictly as per merit after interview arranged in order by the Public Service Commission. In the same year when the appointments are made to the substantive vacancies from both the sources, the promotees shall rank senior to the direct recruits*

in accordance with the quota prescribed under Rule 6. The rules provide the power to appoint Forest Rangers from Subordinate Service, due to administrative exigencies to officiate or to act temporarily as Assistant Conservators of Forest. The rule itself, thus, recognises the distinction between substantive appointment and temporary/officiating appointment. The procedure to prepare the list to man the officiating or temporary vacancies is on the basis of seniority subject to rejection of the unfit. The question of considering relative merit and ability of the promotees inter se, then would not arise. Thereby, it is clear that the list prepared by the Chief Conservator of Forest for appointment of the Forest Rangers to officiate in the posts of Assistant Conservator of Forest on ad hoc or temporary basis is only fortuitous due to non-availability of the direct recruits as stop gap arrangement. Employees appointed purely on ad hoc or officiating basis due to administrative exigencies, even though continued for a long spell, do not become the members of the service unless the Governor appoints them in accordance with the rules and so they are not entitled to count the entire length of their continuous officiating or fortuitous service towards their seniority.

24. *It is notorious that confirmation of an employee in a substantive post would take place long years after the retirement. An employee is entitled to be considered for promotion on regular basis to a higher post if he/she is an approved probationer in the substantive lower post. An officer appointed by promotion in accordance with Rules and within quota and on declaration of probation is entitled to reckon his seniority from the date of promotion and the entire length of service, though initially temporary, shall be counted for seniority. Ad hoc or fortuitous appointments on a temporary or stop gap basis cannot be taken into account for the*

purpose of seniority, even if the appointee was subsequently qualified to hold the post on a regular basis. To give benefit of such service would be contrary to equality enshrined in Article 14 read with Article 16(1) of the Constitution as unequals would be treated as equals. When promotion is outside the quota, the seniority would be reckoned from the date of the vacancy within the quota, rendering the previous service fortuitous. The previous promotion would be regular only from the date of the vacancy within the quota and seniority shall be counted from that date and not from the date of his earlier promotion or subsequent confirmation. In order to do justice to the promotees it would not be proper to do injustice to the direct recruits. The rule of quota being a statutory one it must be strictly implemented and it is impermissible for the authorities concerned to deviate from the rule due to administrative exigencies or expediency. The result of pushing down the promotees appointed in excess of the quota may work out hardship but it is unavoidable and any construction otherwise would be illegal, nullifying the force of statutory rules and would offend Articles 14 and 16(1). Therefore, the rules must be carefully applied in such a manner as not to violate the rules or equality assured under Article 14 of the Constitution. This Court interpreted that equity is an integral part of Article 14. So every attempt would be made to minimise, as far as possible, inequity. Disparity is inherent in the system of working out integration of the employees drawn from different sources, who have legitimate aspiration to reach higher echelons of service. A feeling of hardship to one, or heart burning to either would be avoided. At the same time equality is accorded to all the employees.

25. *In Direct Recruits case the Constitution Bench of this Court in which one of us (K. Ramaswamy, J.)*

was a member, in Propositions 'A' and 'B' in paragraph 47 at page 475 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 rule 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 regularisation of his service in accordance with the rules, the period of officiating service will be counted."

Mr Mukhoty and Mr Garg repeatedly asked us to apply the ratio in the cases of Narender Chadha', Baleshwar Dass' and Chauhan 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 noticed 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 inequitious results, this Court was constrained to evolve "rule of deemed relaxation of the relevant rules" and directed to regularise the services

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.

26. *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 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 propositions 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 Narender 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 regularisation of the service in accordance with the rules, the period of officiating service has to be counted towards seniority. This Court in Narender Chadha 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 Narender Chadha' 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.

27. *Realising that applicability of Proposition 'B' to the facts would run into rough weather 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, 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 prescribed under Rule 6. By no strength 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.

28. *Undoubtedly when there was dearth of direct recruits the promotees discharged the duties ranging between 5 to 12 years prior to filing of the writ petitions. The promotees generally may get one or two chances of promotion to cadre posts in higher echelons of the Indian Forest Service. Reckoning continuous officiation of ad hoc promotion would enable the less privileged to excel their latent capabilities in the cadre post."*

"34. 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 Assistant Conservator of Forest, if not already made, in accordance with Rule 5(b) read with Appendix 'B' and Rule 6. Their seniority shall be counted only from the respective dates of appointment to the substantive posts in their quota under Rule 6 as per the rules. The direct recruits having been appointed in accordance with Rule 5(a) read with Appendix 'A', their seniority shall be counted from the date of their dis- charging the duties of the post of Assistant 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 Rules 5, 6 and the Rule 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 became barred by age for consideration for promotion to cadre posts, the appropriate governments would do well to suitability relax the rules and do justice to the eligible conditions."*
>
> *(Emphasis supplied)*

43. He, therefore, submits that the Tribunal has unanimously concluded that the four Applicants did not have any locus standi to challenge the impugned final list dated 31.12.2020 and the final seniority list dated 03.03.2018. He further submits that these four Applicants were in excess of the quota and, therefore, they would be eligible for regularization from the dates a permanent vacancy arose within their quota. Until then, they would continue to be adhoc appointees and the day they are absorbed on a permanent vacant post in the cadre, that would be the day of their entering the Deputy Collector's quota. In the absence of a vacant post, the Tahasildar could not have been promoted as a Deputy Collector since two Deputy Collectors cannot occupy one post.

44. In the light of the above, Shri Apte submits that if the select list is not in tune with the Rules, these Deputy Collectors in the absence of a review under Rule 12 leading to the ratification of their selection, will have to return back as Tahasildars, notwithstanding the long times they have spent as PDC. He relies upon ***Maharashtra Vikrikar Karmachari Sanghatana vs. State of Maharashtra, (2000) 2 SCC 552***, in support of his above contention. Paragraphs 4 and 26 read as follows:-

> *"4. For the first time, the State Government in exercise of powers conferred by provisions of Article 309 of the Constitution of India, framed the rules called Maharashtra Sales Tax Inspectors Recruitment Rules, 1971 (for short 'the Rules 1971') which came into force w.e.f. September 6, 1971. Suffice is to refer to Rule 2 thereof. It deals with the appointments to the posts of Sales Tax Inspectors from two sources, namely direct recruits and by promotion in the ratio of 60:40 as far as practicable. Rule 2 reads thus :-*
>
> *"2. Appointment to the posts of Sales Tax Inspectors shall be made either :*
>
> *(a) by promotion of suitable clerks in the Sales Tax Department, who have passed at least Part I of the Departmental Examination prescribed for the Sales Tax Inspector or for the Higher Clerical staff in the Sales Tax Department or who have been exempted from passing the Departmental Examination prescribed for Sales Tax Inspectors or for the Higher Clerical Staff:*

Provided that the Clerks who have passed Part I of the Departmental Examination for Sales Tax Inspector and who have been promoted to the posts of Sales Tax Inspectors are required to pass Part II of the Departmental Examination for Sales Tax Inspector also, according to the rules made in that behalf, failing which they shall be liable to be reverted.

The ratio of persons appointed by promotion as provided above and by nomination as provided below shall, as far as practicable, be 40:60. The ratio shall not apply to temporary vacancies not exceeding one year which may be filled by promotion. Such promotions shall, however, be treated as stopgap promotions and will not entitle the promotees to seniority by virtue thereof.

Note : In the period from the date on which these rules come into force to the date on which the results of the first Departmental Examination of Sales Tax Inspectors under the unified Departmental Examination Rules are declared, promotions made to the post of Sales Tax Inspector shall be purely provisional and persons so promoted shall be required to pass the prescribed Departmental Examination within the prescribed period from the date the Departmental Examination rules come into force, failing which they shall be liable to be reverted :

OR

(b) by nomination, on the result of a competitive examination held by the Maharashtra Public Service Commission, from among candidates who -

(i) possess a degree in Arts, Science, Commerce, Law or Agriculture of a recognised University or any recognised equivalent qualifications;

and

(ii) have attained the age of 18 years

and have not attained the age of 24 years, on the first day of the month immediately following the month in which the posts are advertised by the Commission;

Provided that the upper age limit shall be relaxed upto 30 years in the case of persons serving in the Sales Tax Department."

Thereafter, the State of Maharashtra in exercise of powers conferred under Article 309 of the Constitution of India framed the Rules for regulating the seniority amongst government employees. The said Rules were called Maharashtra Civil Services (Regulation of Seniority) Rules, 1982 (for short 'Rules 1982'). These rules came into force w.e.f. June 21, 1982, Rule 4 is relevant in the present controversy and it reads thus :

"4. General Principles of Seniority : (1) Subject to the other provisions of these rules, the seniority of a Government servant in any post, cadre or service shall ordinarily be determined on the length of his continuous service there:

Provided that, for the purpose of computing such service, any period of absence from the post, cadre or service due to leave, deputation for training or otherwise or on foreign service or temporary officiation in any other post shall be taken into account, if the competent authority certified that the Government servant concerned would have continued in the said post cadre or service during such period, had he not proceeded on leave or deputation Or been appointed temporarily to such other post:

Provided further that, the service, if any, rendered by him as a result of a fortuitous appointment shall be excluded in computing the length of service and for the purposes of seniority he shall be deemed to have been

appointed to the post in the cadre of service on the date on which his regular appointment is made in accordance with the provisions of the relevant recruitment rules.

(2) Notwithstanding anything contained in sub rule (1) :

(a) the inter se seniority of direct recruits selected in one batch for appointment to any post, cadre or service, shall be determined according to their ranks in the order of preference arranged by the Commission, Selection Board or in the case of recruitment by nomination directly made by the competent authority, the said authority, as the case may be, if the appointment is taken up by the person recruited within thirty days from the date of issue of the order of appointment or within such extended period as the competent authority may in its discretion allow.

(b) the inter se seniority of Government servants promoted from a Select List shall be in the same order in which their names appear in such Select List. If the Select List is prepared in two parts, the first part, containing the names of those selected unconditionally and the second part containing the names of those selected provisionally. All persons included in the first part shall rank above those included in all second part:

Provided that, if the order in which the names are arranged in the Select List is changed following a subsequent review of it, the seniority of the Government servants involved shall be re-arranged and determined afresh in conformity with their revised ranks.

(c) the seniority of a transferred Government servant vis-a-vis the Government servant in the posts, cadre or service to which he is transferred shall be determined by the competent authority with due regard to the

class and pay scale of the post, cadre or service from which he is transferred, the length of his service therein and the circumstances leading to his transfer.

(3) Where the dates of appointment in posts, cadre or service of any two or more persons determined after assigning the deemed dates, if necessary, are identical the person senior in age shall be considered as senior for the purpose of deter-mining the seniority."

Rule 3 contains several definitions and we are concerned with four definitions.

"3(d) "Deemed date" means the date assigned to a Government servant in accordance with the provisions of Rub 5;

3(e) "Direct recruit" means, in relation to any post, cadre or service, a person appointed by nomination thereto;

3(f) "fortuitous appointment' means a temporary appointment made pending a regular appointment in accordance with the provisions of the relevant recruitment rules;

3(h) "Promotee" means, In relation to any post, cadre or service, a Government servant appointed thereto by promotion from a lower post, cadre or service;"

"26. Lastly, it was contended on behalf of the appellants that some of :the appellants have put in more than 17 years of service when few of the direct recruits were either schooling and/or not born in the cadre. If the appellants were to be pushed down, it will cause a great hardship to them. We are unable to subscribe to this contention because if there is patent violation of the quota rule, the result must follow and the appellants who remained in the office for all these years cannot take the advantage of this situation. This submission is, therefore, devoid

of any substance.”

(Emphasis supplied)

45. He then relies upon ***M.S.L. Patil, Asstt. Conservator of Forests, Solapur (Maharashtra) and others vs. State of Maharashtra and others, (1996) 11 SCC 361***, to contend that even if many years have passed in the PDC cadre, if there is no review, the result of returning back as Tahasildar, has to follow. Paragraphs 2 and 3 read as under:-

> “*2. Mr. M.S.L. Patil, party appearing-in-person has raised five contentions, namely, that the combined seniority as per the rules was to be maintained from the date of the regular appointment or promotion. As per the rules, the petitioner came to be appointed prior to the appointment of the direct recruits. Therefore, the entire length of service rendered by him as an Assistant Conservator of Forests requires to be tagged for maintaining his seniority. If so considered, he would be senior to the direct recruits. Therefore, they cannot scale march over the promotees. It is also contended that the direct recruits unfilled quota cannot be carried forward. He places reliance on the judgment of this court in Indra Sawhney v. Union of India [1992 Supp. (3) 217] known as Mandal's case. They were not recruited according to rules. He also contended that he was not made a party to the earlier proceedings which culminated in the aforesaid judgment. Therefore, the decision passed by this Court is violative of the principles of natural justice. He also contended that the third respondent in this case is a direct recruit and has concealed several material*

facts which led to the open judgment by this Court. Shri Raju Ramachandran, learned senior counsel appearing for some of the promotees, contended that in the earlier case, this Court in paragraph 9 of the judgment has specifically stated the premises that specific material has not been placed on record of the appointment of the promotees, viz., whether their promotions were fortuitous or not. The quota rules was broken down between the direct recruits and the promotees. Even under Rules, 1982, the second proviso thereto gives a power to the Government to certify that the direct recruitment could not be made. In view of the stand taken by the Government in the counter- affidavit filed in the Tribunal that the so-called rule of quota has been broken down, it would amount to certification that it did not make regular recruitment; as a result, promotees gain seniority which has to be counted from the date of the regular promotion. Thereby, they would be senior to the direct recruits.

3. *In view of these contentions, the question that arises is whether the judgment of this Court has been vitiated by any error of law warranting reconsideration at the behest of some of the persons who are not parties to the earlier proceedings? It is undoubted that they were not parties to their earlier petition but this Court has laid down the general principle of law, and, therefore, whether or not they are parties to the earlier proceedings, the general principle of law stands applicable to every person irrespective of the fact whether he is party to the earlier order or not. It is not in dispute that there is a ratio prescribed for the direct recruits and the promotees, namely 1:1. In other words, for every 100 vacancies the promotees are entitled only to 50 vacancies. It is not in dispute*

that these promotees have been promoted in excess of the quota. Under those circumstances, it is settled law that the promotees who are appointed in excess of the quota cannot get the be fitted into seniority according to the rules. As to what is the date on which the promotees or the direct recruits came to be appointed into the respective quota is a matter of record and the seniority is required to be determined according to the law laid down by this Court. In several judgments of this Court, it is now firmly settled that mere by because of the fact that State Government could not make direct recruitment due to its inaction, it cannot be said that the rule of quota has been broken down. Therefore, as and when the direct recruitment has been made, the direct recruits are entitled to placement of their seniority into the vacancies reserved for them as per the ratio and the seniority determined as per the rules within the respective quota. Similarly, when the promotees came to be promoted in accordance with the rules in excess of their quota, this Court stated in K.C. Joshi and others v. Union of India and others, [AIR 1991 SC 284] though a Bench of three Hon'ble Judges, that the promotees in excess of the quota cannot be given seniority from the respective dates of their promotions. They have to be considered only from the respective dates on which their respective quota is available. The same decision was followed and reiterated in A.N. Sehgal vs. Raje Rama [1992 Supp. (1) SCC 304]. Under these circumstances, we do not think that the judgment of this Court is vitiated by any error of law for reconsideration. Even Rule 4, second proviso has no application to the facts in this case. Rule 4 contemplates the seniority and second proviso postulates that when the recruitment could not be made, they have to certify the ground on which it could not

> *be made and thereafter the seniority has to be determined. In view of the law now laid down, the certification of the non-making of direct recruitment according to rules, bears no relevance. The question of carry forward in this case, as laid down in Mandal's case, has no application for the reason that the recruitment in proportion is one the methods of recruitment and is required to be made. The balance posts are required to be recruited by subsequent publication and the promotees have no right to get into the post reserved for the direct recruits. Mandal's case concerns carry forward posts reserved under Article 16(4) for Scheduled Castes, Scheduled Tribes and Other Backward Classes which has nothing to do in this case. Though some of the grounds will be available to argue the case on merits, that is no ground to reopen the settled law laid by this Court in earlier decision."*

46. He then relies upon a judgment delivered by the Tribunal on 17.04.2008 in Original Application No.526/2004 (***Rajendra Nimbalkar and others vs. The State of Maharashtra and others***), wherein, the Tribunal has upheld the rule of quota as set out in Rule 4. He relies upon clauses 2, 3, 5 and 5.1 of the impugned list dated 31.12.2020 in support of his above contention. To the extent of review under Rule 12, he relies upon clause 5.2. He also relies upon clause 5.3 with regard to fortuitous service. He has further placed reliance upon clauses 5.4, 5.5, 6, 6.1 to 6.3, 7, 7.1 to 7.4 and 8.

47. Shri Apte has then referred to clause 3 of the operative order, passed by the learned Member (Judicial) and submits that such directions without allowing the O.A. and without concluding that the impugned final list is bad in law, would be an unsustainable direction. Clause 3 reads thus:-

> *"3. The seniority list of the Deputy Collectors for the period 01.01.2004 onwards shall be prepared having regard to the observations made in the present order and strictly in observance of the Recruitment Rules of 1977, within the period of next 6 months from the date of this order."*

48. Shri Apte has then referred to the Government Resolution dated 31.12.2020 by which, the cadre strength of the Deputy Collectors was fixed at 514 from 1999 onwards. This strength was maintained upto 2012. The impugned seniority list is upto 2003. He then takes a strong exception to the direction issued by the Tribunal to prepare a fresh seniority list from 2004, which was nobody's prayer before the Tribunal. When the Tribunal has held that the four Applicants did not have the locus standi to file the petition and had no cause of action due to which the Tribunal disposed off the applications, it could not have

granted any relief indirectly to the Applicants which they could not get directly. On these premises, he submits that clause 4 of the operative part of the Tribunal's order directing deletion of the word 'fortuitous', is unsustainable.

Submissions of the Senior Advocate Shri Kumbhakoni

49. The learned Senior Advocate representing the DDC in these matters, more specifically Respondent No.5 in Writ Petition No.9163/2022 and the Petitioner in Writ Petition No.9631/2022, submits that the impugned judgment of the Tribunal is a "fractured view". The Tribunal Members have concurred only on two grounds, firstly that the four Applicants do not have the locus to file the applications and they do not have any cause of action. Despite having concluded that the four Applicants could not have filed the proceedings, the Tribunal proceeded to deal with the merits of the matter. This was uncalled for and was not expected from the Tribunal.

50. On the merits of the claims of these Applicants, the Tribunal did not interfere with the impugned final seniority list dated 31.12.2020, which covers the period from 01.01.1999 till

31.12.2003. The earlier seniority list dated 31.12.1998 has been finalized and the said issue is concluded. In the light of these facts, the Tribunal had no reason to go into the merits of the claims of the Applicants, inasmuch as, it has further travelled in declining to interfere with the final seniority list and yet, has issued certain directions to the State, which cannot be sustained.

51. On the aspect of whether, the impugned judgment could be termed as a "judgment", Shri Kumbhakoni has relied upon the view taken by the Honourable Supreme Court in ***Shakuntala Shukla vs. State of U.P. and others, (2021) SCC Online SC 672***, wherein, it has been held that the judgment must be pronounced on the statement of material/ relevant facts, legal issues or questions, deliberation to reach at a decision and the ratio or conclusive decision. It would be apposite to reproduce paragraph Nos.32 to 37 hereunder:-

> *"32. Having gone through the impugned judgment and order passed by the High Court releasing the accused on bail pending appeal, we are at pains to note that the order granting bail to the accused pending appeal lacks total clarity on which part of the judgment and order can be said to be submissions and which part can be said to be the findings/reasonings. It does not even reflect the submissions on behalf of the*

Public Prosecutor opposing the bail pending appeal. A detailed counter affidavit was filed on behalf of the State opposing the bail pending appeal which has not been even referred to by the High Court. The manner in which the High Court has disposed of the application under Section 389 Cr.P.C. and has disposed of the application for bail pending appeal cannot be approved. It is very unfortunate that by this judgment, we are required to observe the importance of judgment; purpose of judgment and what should be contained in the judgment.

33. *First of all, let us consider what is "judgment". "Judgment" means a judicial opinion which tells the story of the case; what the case is about; how the court is resolving the case and why. "Judgment" is defined as any decision given by a court on a question or questions or issue between the parties to a proceeding properly before court. It is also defined as the decision or the sentence of a court in a legal proceeding along with the reasoning of a judge which leads him to his decision. The term "judgment" is loosely used as judicial opinion or decision. Roslyn Atkinson, J., Supreme Court of Queensland, in her speech once stated that there are four purposes for any judgment that is written:*

i) to spell out judges own thoughts;

ii) to explain your decision to the parties;

iii) to communicate the reasons for the decision to the public; and

iv) to provide reasons for an appeal court to consider

34. *It is not adequate that a decision is accurate, it must also be reasonable, logical and easily comprehensible. The judicial opinion is to be written in such a way that it elucidates in a convincing manner and proves the fact that the verdict is righteous and judicious. What the*

court says, and how it says it, is equally important as what the court decides.

35. *Every judgment contains four basic elements and they are (i) statement of material (relevant) facts, (ii) legal issues or questions, (iii) deliberation to reach at decision and (iv) the ratio or conclusive decision. A judgment should be coherent, systematic and logically organised. It should enable the reader to trace the fact to a logical conclusion on the basis of legal principles. It is pertinent to examine the important elements in a judgment in order to fully understand the art of reading a judgment. In the Path of Law, Holmes J. has stressed the insentient factors that persuade a judge. A judgment has to formulate findings of fact, it has to decide what the relevant principles of law are, and it has to apply those legal principles to the facts. The important elements of a judgment are:*

i) Caption
ii) Case number and citation
iii) Facts
iv) Issues
v) Summary of arguments by both the parties
vi) Application of law
vii) Final conclusive verdict

36. *The judgment replicates the individuality of the judge and therefore it is indispensable that it should be written with care and caution. The reasoning in the judgment should be intelligible and logical. Clarity and precision should be the goal. All conclusions should be supported by reasons duly recorded. The findings and directions should be precise and specific. Writing judgments is an art, though it involves skillful application of law and logic. We are conscious of the fact that the judges may be overburdened with the pending cases and the arrears, but at the same time, quality can never*

be sacrificed for quantity. Unless judgment is not in a precise manner, it would not have a sweeping impact. There are some judgments that eventually get overruled because of lack of clarity. Therefore, whenever a judgment is written, it should have clarity on facts; on submissions made on behalf of the rival parties; discussion on law points and thereafter reasoning and thereafter the ultimate conclusion and the findings and thereafter the operative portion of the order. There must be a clarity on the final relief granted. A party to the litigation must know what actually he has got by way of final relief. The aforesaid aspects are to be borne in mind while writing the judgment, which would reduce the burden of the appellate court too. We have come across many judgments which lack clarity on facts, reasoning and the findings and many a times it is very difficult to appreciate what the learned judge wants to convey through the judgment and because of that, matters are required to be remanded for fresh consideration. Therefore, it is desirable that the judgment should have a clarity, both on facts and law and on submissions, findings, reasonings and the ultimate relief granted.

37. *If we consider the impugned order passed by the High Court, as observed hereinabove, we find that there is a total lack of clarity on the submissions, which part of the order is submission, which part of the order is the finding and/or reasoning. As observed hereinabove, even the submissions on behalf of the Public Prosecutor have not been noted and referred to, though a detailed counter affidavit was filed by the State opposing the bail applications. We do not approve the manner in which the High Court has disposed of the application for bail pending appeal."*

52. He, therefore, poses a legal question before us as to whether, this Court should deal with the aspect of the locus standi and cause of action, alone or go into the merits of the matter as if this Court is exercising appellate jurisdiction. According to him, the impugned judgment is impossible to be confirmed "as it is". He, therefore, contends that this Court could decide the issues of locus standi and cause of action and not any other issue, since it is a fractured decision. This Court exercising Writ jurisdiction, cannot deal with a matter as an Appellate Court. If there is a direct conflict between the two Members of the Tribunal, almost on all points except the two referred above, any indulgence by the High Court in going into the merits of the matter would amount to performing the obligation of a third member, by the High Court.

53. He refers to Section 26 of the Administrative Tribunals Act, 1985, which reads thus:-

> *"26. Decision to be by majority.—If the Members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority, but if the Members are equally divided, they shall state the point or points on which they differ, and make a reference to the Chairman who shall*

> *either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other Members of the Tribunal and such point or points shall be decided according to the opinion of the majority of the Members of the Tribunal who have heard the case, including those who first heard it."*

54. He submits that when one member draws a specific conclusion as regards the important aspects in the case and the Member (Administrative) authors a separate portion of the judgment, his concluding approval paragraph can only be termed as a compulsion and not a conclusion. Even the PDC have raised grounds in Writ Petition No.9163/2022, that the reliefs and directions which were sought, have not been granted by the Tribunal and such directions which were never sought, have been granted. He contends that the learned Judicial Member has taken a different, distinct and divergent view, vis-a-vis the view taken by the Member (Administrative).

55. He relies upon paragraphs 16 to 19 of the judgment delivered by the Honourable Supreme Court in ***J. Balaji Singh vs. Diwakar Cole and others, (2017) 14 SCC 207***, which read as under:-

"16. In our considered view, the only error which the first Appellate Court committed was that it went on to record the findings on merits. In our view, it was not necessary to do so while passing the order of remand. The reason is that once the first Appellate Court formed an opinion to remand the case, it was required to give reasons in support of the remand order as to why the remand is called for in the case. Indeed, the remand was made only to enable the Trial Court to decide the case on merits. Therefore, there was no need to discuss much less record findings on several issues on merits. It was totally uncalled for.

17. So far as the impugned order is concerned, the High Court, in our view, committed jurisdictional error when it also again examined the case on merits and set aside the judgment of the first Appellate Court and restored the judgment of the Trial Court. The High Court, in our opinion, should not have done this for the simple reason that it was only examining the legality of the remand order in an appeal filed under Order 43 Rule 1(u) of the Code. Indeed, once the High Court came to a conclusion that the remand order was bad in law then it could only remand the case to the first Appellate Court with a direction to decide the first appeal on merits.

18. The High Court failed to see that when the first Appellate Court itself did not decide the appeal on merits and considered it proper to remand the case to the Trial Court, a fortiori, the High Court had no jurisdiction to decide the appeal on merits. Moreover, Order 43 Rule 1(u) confers limited power on the High Court to examine only the legality and correctness of the remand order of the first Appellate Court but not beyond that. In other words, the High Court should have seen that Order 43 Rule 1(u) gives a limited power to examine the issue relating to

legality of remand order, as is clear from Order 43 Rule 1(u) which reads thus:-

"1(u) an order under rule 23 or rule 23A of Order XLI remanding a case, where an appeal would lie from the decree of the Appellate Court"

19. It is well settled law that the jurisdiction to decide the appeal on merits can be exercised by the Appellate Court only when the appeal is filed under Section 96 or 100 of the Code against the decree. Such was not the case here."

[Emphasis supplied]

56. Shri Kumbhakoni has then relied upon a judgment dated 09.02.2021, delivered by this Court at the Nagpur Bench in Writ Petition No.3077/2020, ***Vijaysingh Gajrajsingh Chauhan vs. Governor of Maharashtra and others***, AIR Online 2021 Bombay 99, [Civil Writ Petition No.3077/2020 (Nagpur Bench) decided on 09.02.2021]. The averment of the State in the said case was that, the petition did not disclose any cause of action, no averments have been put forth as regards the right of the Petitioner being affected. Reliance was placed on ***Kusum Ingots and Alloys Limited vs. Union of India and another, 2004 (6) SCC 254***, ***Jotun India Private Limited vs. Union of India and others, 2018 SCC Online Bombay 6400*** and ***United Forum and others vs. The Union of India and others, 2018 SCC***

Online Bombay 2221, to buttress his contention that the Court should decide an issue if there is a cause of action and should refrain from taking up an issue which is purely academic in nature.

57. He has then pointed out paragraphs 4, 7, 8 and 10, which read thus:-

> *"4. Learned Advocate General further contends that the present matter not being a public interest litigation but a writ petition filed by the petitioner, the requirement to disclose a cause of action, is mandatory. He further submits that the petitioner does not fall within the expression "aggrieved person" and neither does he have any direct grievance, for which reliance is placed upon Ayaaubkhan Noorkhan Pathan Vs. State of Maharashtra and others, (2013) 4 SCC 465. Further contentions are that there is no executable prayer; the petition merely seeking a declaration is not maintainable. He further submits that only para 54 in the petition, remotely suggests of any cause of action, which does not satisfy the requirement of law of any cause in the petitioner. The petition therefore according to him is not maintainable and is required to be dismissed on that count alone."*
>
> *"7. The right to approach a Court of law by a party, is intrinsically linked to a cause of action, accrued in favour of such a party. The approach, is always for the redressal of a grievance or an entitlement, the denial of which gives rise to a cause of action to a party whose*

right is affected by any such cause of action. Thus, the traditional view as to a "cause of action" is always personal to the party. The question whether passing of a legislation by itself would give rise to a cause of action, has been considered by the Hon'ble Apex Court in Rai Bahadur Hurdut Roy Moti Lal Jute Mills (supra) as under :-

"7. On behalf of the appellant Mr Lal Narain Sinha has contended that the High Court was in error in holding that the proviso to Section 14-A violates either Article 20(1) or Article 31(2) of the Constitution. He has addressed us at length in support of his case that neither of the two articles is violated by the impugned proviso. On the other hand, the learned Solicitor-General has sought to support the findings of the High Court on the said two constitutional points; and he has pressed before us as a preliminary point his argument that on a fair and reasonable construction, the proviso cannot be applied to the case of the first respondent. We would, therefore, first deal with this preliminary point. In cases where the vires of statutory provisions are challenged on constitutional grounds, it is essential that the material facts should first be clarified and ascertained with a view to determine whether the impugned statutory provisions are attracted; if they are, the constitutional challenge to their validity must be examined and decided. If, however, the facts admitted or proved do not attract the impugned provisions there is no occasion to decide the issue about the vires of the said provisions. Any decision on the said question would in such a case be purely academic. Courts are and should be reluctant to decide constitutional points merely as matters of academic importance."

The same has also been considered in Kartar

Singh (supra) as under :-

"12. The standards themselves, it would be noticed, have been prescribed by the Central Government on the advice of a Committee which included in its composition persons considered experts in the field of food technology and food analysis. In the circumstances, if the rule has to be struck down as imposing unreasonable or discriminatory standards, it could not be done merely on any appropriate reasoning but only as a result of materials placed before the Court by way of scientific analysis. It is obvious that this can be done only when the party invoking the protection of Article 14 makes averments with details to sustain such a plea and leads evidence to establish his allegations. That where a party seeks to impeach the validity of a rule made by a competent authority on the ground that the rules offend Article 14 the burden is on him to plead and prove the infirmity is to well established to need elaboration. If, therefore, the respondent desired to challenge the validity of the rule on the ground either of its unreasonableness or its discriminatory nature, he had to lay a foundation for it by setting out the facts necessary to sustain such a plea and adduce cogent and convincing evidence to make out his case, for there is a presumption that every factor which is relevant or material has been taken into account in and formulating the classification of the zones and the prescription of the minimum standards to each zone, and where we have a rule framed with the assistance of a committee containing experts such as the one constituted under Section 3 of the Act, that presumption is strong, if not overwhelming. We might in this connection add that the respondent cannot assert any fundamental right under Article 19(1) to carry

on business in adulterated foodstuffs.

13. Where the necessary facts have been pleaded and established, the Court would have materials before it on which it could base findings, as regards the reasonableness or otherwise or of the discriminatory nature of the rules. In the absence of a pleading and proof of unreasonableness or arbitrariness the Court cannot accept the statement of a party as to the unreasonableness or unconstitutionality of a rule and refuse to enforce the rule as it stands merely because in its view the standards are too high and for this reason the rule is unreasonable. In the case before us there was neither pleading nor proof of any facts directed to that end. The only basis on which the contention regarding unreasonableness or discrimination was raised was an apriori argument addressed to the Court, that the division into the zones was not rational, in that hilly and plain areas of the country were not differentiated for the prescription of the minimum Reichert values. That a distinction should exist between hilly regions and plains, was again based on apriori reasoning resting on the different minimum Reichert values prescribed for Himachal Pradesh and Uttar Pradesh and on no other. It was, however, not as if the entire State of Himachal Pradesh is of uniform elevation or even as if no part of that State is plain country but yet if the same minimum was prescribed for the entire area of Himachal Pradesh, that would clearly show that the elevation of a place is not the only factor to be taken into account."

In Kusum Ingots (supra) the Hon'ble Apex Court held as under :-

"19. Passing of a legislation by itself in our opinion do not confer any such right to file a writ petition unless a cause of action arises

therefor.

21. A parliamentary legislation when it receives the assent of the President of India and is published in an Official Gazette, unless specifically excluded, will apply to the entire territory of India. If passing of a legislation gives rise to a cause of action, a writ petition questioning the constitutionality thereof can be filed in any High Court of the country. It is not so done because a cause of action will arise only when the provisions of the Act or some of them which were implemented shall give rise to civil or evil consequences to the petitioner. A writ court, it is well settled, would not determine a constitutional question in vacuum."

8. Thus the consistency of judicial opinion, in so far as it considers the cause of action, for the purpose of laying a challenge to the constitutional validity of any statutory provision, as spelt out from the above decisions, clearly indicates that the person raising such challenge, ought to have a cause of action, which would mean material facts, enabling the existence of a cause of action."

"10. It is further material to note that the petitioner also does not fall within the expression "aggrieved person", as indicated in Ayaaubkhan Noorkhan Pathan (supra) in the following manner :-

"9. It is a settled legal proposition that a stranger cannot be permitted to meddle in any proceeding, unless he satisfies the authority/court, that he falls within the category of aggrieved persons. Only a person who has suffered, or suffers from legal injury can challenge the act/action/order etc. in a court of law. A writ petition under Article 226 of the Constitution is maintainable either for the purpose of enforcing a statutory or legal

right, or when there is a complaint by the appellant that there has been a breach of statutory duty on the part of the authorities. Therefore, there must be a judicially enforceable right available for enforcement, on the basis of which writ jurisdiction is resorted to. The Court can, of course, enforce the performance of a statutory duty by a public body, using its writ jurisdiction at the behest of a person, provided that such person satisfies the Court that he has a legal right to insist on such performance. The existence of such right is a condition precedent for invoking the writ jurisdiction of the courts. It is implicit in the exercise of such extraordinary jurisdiction that the relief prayed for must be one to enforce a legal right. In fact, the existence of such right, is the foundation of the exercise of the said jurisdiction by the Court. The legal right that can be enforced must ordinarily be the right of the appellant himself, who complains of infraction of such right and approaches the Court for relief as regards the same.

10. A "legal right", means an entitlement arising out of legal rules. Thus, it may be defined as an advantage, or a benefit conferred upon a person by the rule of law. The expression, "person aggrieved" does not include a person who suffers from a psychological or an imaginary injury; a person aggrieved must, therefore, necessarily be one whose right or interest has been adversely affected or jeopardised.

11. In Anand Sharadchandra Oka v. University of Mumbai, a similar view was taken by this Court, observing that, if a person claiming relief is not eligible as per requirement, then he cannot be said to be a person aggrieved regarding the election or the selection of other persons."

58. Shri Kumbhakoni, therefore, submits that unless a cause of action is intrinsically linked with a litigant in whose favour a specific right in law has accrued, a court should avoid entering into the merits of the case in the absence of any cause espoused by the litigant. He then relies upon ***State of Bihar vs. Rai Bahadur Hurdut Roy Moti Lal Jute Mills and another, AIR 1960 SC 378***, wherein, the Honourable Supreme Court has held that any decision on a question which is purely of an academic nature, would serve no purpose and the Courts should be reluctant to take up such an issue. He, therefore, sums up that when both the members of the Tribunal had concurred on there being no cause of action and the Applicants had not locus standi, it should not have dealt with the merits of the case.

59. Shri Kumbhakoni has submitted that Writ Petition No.12699/2022 filed by Nitin Mahajan vs. The State of Maharashtra and others, is not maintainable since the Petitioner has directly approached this Court praying for reliefs which could be considered only by the Tribunal. He relies upon the judgment delivered by this Court dated 16.02.2022, delivered in Writ Petition No.12297/2021 (Aurangabad Bench), ***M/s Mestra***

AG Switzerland vs. The State of Maharashtra and others.

Paragraphs 14, 17, 26 and 27 read as under:-

> *"14. In the present case, the machinery providing appeal is sought to be bye-passed by the petitioner on the ground that the Tribunal having already pronounced its decision in a similar matter, substantial justice cannot be expected from the first appellate authority as well as from the second appellate authority. This is the crux of Mr. Sridharan's argument. It is now time to examine the contentions raised by him."*
>
> *"17. Mr. Sridharan is again right, but only partially. Notwithstanding that questions of fact emerged for decision in Thansingh Nathmal (supra), the Supreme Court had the occasion to lay down therein a principle of law which is salutary and not to be found in any other previous decision rendered by it. The principle, plainly is that, if a remedy is available to a party before the high court in another jurisdiction, the writ jurisdiction should not normally be exercised on a petition under Article 226, for, that would and allow the machinery set up by the concerned statute to be bye-passed. The relevant passage from the decision reads as follows:*
>
> > *"The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Article. But the exercise of the jurisdiction is discretionary; it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort to that jurisdiction is not intended as an alternative*

remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy which, without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit, by entertaining a petition under Article 226 of the Constitution, the machinery created under the statute to be by-passed, and will leave the party applying to it to seek resort to the machinery so set up."

"26. To sum up, we are loath to entertain this writ petition by exercising our discretion because (i) the petitioner can approach this Court in its appellate jurisdiction under section 27 of the MVAT Act at the appropriate time; and (ii) the petitioner is free to rely on the decision in Mahyco Monsanto Biotech (India) Pvt. Ltd. (supra) before the appellate authority to have the impugned order reversed since such decision will prevail, if it is applicable, over any previous contra decision of the Tribunal."

" 27. However, in the peculiar facts and circumstances, viz. pendency of this writ petition on the file of this Court for quite some

> *time and that a Constitutional issue touching Article 286 of the Constitution is sought to be raised, we are inclined not to relegate the petitioner to the first appellate remedy but to give it opportunity to prefer an appeal before the Tribunal directly, if it so chooses, so that any infirmity in the impugned order can be brought to its notice, including the decision of this Court in the case of Mahyco Monsanto Biotech (India) Pvt. Ltd. (supra), for its correction. It is ordered accordingly."*

60. He has then relied upon ***Gaurav Ganesh Das Daga and others vs. MPSC and others***, Writ Petition No.2270/2021 (Mumbai Appellate Jurisdiction), wherein, this Court has delivered a judgment on 04.03.2022, concluding that when the provisions of the Administrative Tribunals Act are applicable and the Tribunal is a statutory forum, approaching the High Court should be discouraged. He relies upon paragraph Nos.8, 9, 11, 16, 18, 22 and 23, which read as under:-

> *"8. Having heard the parties and on consideration of the decisions cited at the Bar, we find no reason to take a view different from the one expressed by us orally on 2nd March, 2022. We completely concur with the reasons assigned by the coordinate Bench in Vijay Ghogare (supra) for holding the writ petition to be not maintainable before the Court at this stage. In view of such concurrence, we could have preferred to maintain reticence to assigning our reasons twice over on the same subject.*

However, we wish to furnish our opinion with a view to clear certain misconceptions in law while holding these writ petitions not to be maintainable before this Court. This, we feel, is required on noticing the emergence of judicial decisions by some Courts, based on misreading of the law laid down in L. Chandra Kumar (supra) as well as T. K. Rangarajan (supra), whereby grievances of State Government employees were entertained at the first instance upon holding that the remedy before the Tribunals constituted by the Act is an alternative to the writ remedy available under Article 226 of the Constitution.

9. The discussion on the topic must, however, begin with Kiran Singh & Ors. vs. Chaman Paswan & Ors.. It happens to be one of the vintage decisions of the Supreme Court referring to the fundamental principle of law, well established, that a decree passed by a Court without jurisdiction is a nullity and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject matter of the action strikes at the very authority of the Court to pass any decree, and such a defect cannot be cured even by consent of parties. The said decision has been followed in a long-line of decisions to which reference is considered unnecessary at this stage. However, we wish to record why such decision is relevant at a later part of this discussion."

"11. We have found on perusal of the decisions cited by Mr. Deshmukh that some of the Courts have lost complete sight of the difference between an alternative remedy (meaning thereby that, apart from the High Court, another statutory remedy is available that provides an equally efficacious remedy and which could have been pursued by the litigant, but he elects to explore the writ remedy since the bar of alternative remedy, being a rule of

self-imposed limitation, does not oust the writ court's jurisdiction) and a statutory remedy (which is provided by the law as the first, nay only, legal remedy, whereafter the aggrieved party could pursue, if so advised, the writ remedy questioning the decision given by the statutory fora). This position of law would require a little elaboration in the wake of what the position in law was prior to the 42nd Constitution (Amendment) Act, 1976, which introduced Part XIV A in the Constitution containing Articles 323-A and 323-B as well as in the light of what the Constitution Bench laid down in L. Chandra Kumar (supra) while inter alia examining challenges to sub-clause (d) of clause (2) of Article 323-A and section 28 of the Act."

"16. Having regard to such scheme of things, which could be pursued by an aggrieved employee, we are also of the firm view that the law laid down in Whirlpool Corporation vs. Registrar of Trade Marks (carving out exceptions on the fulfillment whereof a writ petition could be directly entertained notwithstanding that the litigant has not availed the alternative remedy made available by a statute) cannot be applied to proceedings seeking to invoke the writ jurisdiction of the High Court for relief when the subject matter of the action is covered by "service matters" as defined in section 3(q) of the Act."

"18. Unhesitatingly therefore, we record that the decision in Magadh Sugar & Energy (supra) does not assist the case of the petitioners."

"22. Now, we need to come back to Kiran Singh (supra) and say why it is relevant for the present purpose. In our considered opinion, a decision rendered by the High Court on a challenge of the present nature (which is covered by the provisions of the Act and MAT being the forum required to be approached for relief) would be a nullity in view of the decision in Kiran Singh (supra) read with L. Chandra Kumar (supra). Knowing and

understanding what the law is, straining ourselves to look into the merits of the challenge and rendering a decision which we know would be a nullity should not at all be attempted.

23. We ought to deal with one other side argument of Mr. Deshmukh before recording our conclusion. He has submitted that since the GRs under challenge in this batch of writ petitions are also under challenge in a separate batch of writ petitions concerning recruitment of engineers in the Maharashtra State Electricity Distribution Company Ltd. (hereafter "MSEDCL", for short), the MAT has no jurisdiction to try such writ petitions and the same would be required to be heard and decided on merits by this Court. However, driving one set of petitioners to move the MAT while allowing another set of petitioners to have their claim decided by the High Court could lead to divergent opinions being rendered. He, therefore, submits that it is desirable that this Court hears all the writ petitions analogously."

61. He contends that though the Tribunal at Aurangabad has taken a particular view, the said Petitioner does not get a right to bypass the Tribunal and approach this Court directly. Moreover, the right of the Respondents also has to be considered since, if the said Petitioner was to succeed before the Tribunal, a right to test the legality and validity of the judgment delivered by the Tribunal is available to the Respondents and such right stands taken away by the Petitioner having directly approached this Court.

Shri Kumbhakoni's submissions on the merits of the cases

62. Shri Kumbhakoni refers to Section 26 of the Administrative Tribunals Act to contend that the members of the Tribunal have to identify the differing points. He relies on ***Shekhar Narayan Shetty vs. Madhavlal Pittie and others, 2015(4) Mh.L.J. 687***. In support of his contention that these matters deserve to be remitted to the Tribunal for a rehearing, he relied upon ***B. Premanand and others vs. Mohan Koikal and others, (2011) 4 SCC 266***.

63. Shri Kumbhakoni further contends that since this Court is exercising supervisory jurisdiction, if there are inherent deficiencies in the impugned judgment of the Tribunal, this Court cannot take up the matters as if it is exercising jurisdiction in an appeal. The conclusions drawn by each member of the Tribunal cannot be rectified by this Court. He further submits that since the 'coram' of the Tribunal has changed, it would be fruitful to remand the matters to the Tribunal for a rehearing.

64. Shri Kumbhakoni submits that the consultation with the Maharashtra Public Service Commission (MPSC), is inevitable and the Tribunal has clearly failed in considering this aspect. Without concurrence of the MPSC, no promotion can be legalized/ratified by the State.

Submissions of the learned Senior Advocate Shri Rajadhyaksha

65. Shri Atul Rajadhyaksha, the learned Senior Advocate, is leading all the learned Advocates, who are appearing for the PDC in all these matters. He submits that the Writ Petitions filed by the State of Maharashtra and the DDC, will have to be dismissed purely on the ground of non-joinder of parties. The Tribunal has not been arrayed as a Respondent in the said petitions. He relies upon the judgment delivered by the Honourable Supreme Court in ***Udit Narain Singh Malpaharia vs. Additional Member, Board of Revenue, Bihar***, ***AIR 1963 SC 786*** and points out paragraph Nos.8 and 11, which read as under:-

> *"8. The next question is, what is the nature of a*

writ of certiorari? What relief can a petitioner in such a writ obtain from the Court? Certiorari lies to remove for the purpose of quashing the proceedings of inferior courts of record or other persons or bodies exercising judicial or quasi-judicial functions. It is not necessary for the purpose of this appeal to notice the distinction between a writ of certiorari and a writ in the nature of certiorari; in either case the High Court directs an inferior tribunal or authority to transmit to itself the record of proceedings pending therein for scrutiny and, if necessary, for quashing the same. It is well settled law that a certiorari lies only in respect of a judicial or quasi-judicial act as distinguished from an administrative act. The following classic test laid down by Lord justice Atkin, as he then was, in The Kind v. Electricity Commissioner (1924) 1 KB 171 and followed by this Court in more than one decision clearly brings out the meaning of the concept of judicial act:

"Wherever any body of persons having legal authority to determine questions affecting the rights of subjects, and having the duty to act judicially.. act in excess of their legal authority they are subject to the controlling jurisdiction of the King's Bench Division exercised in these writs."

Lord justice Slesser in The King v. London County Council, (1931) 2 KB 215 (243) dissected the concept of judicial act laid down by Atkin, L. J., into the following heads in his judgment: "wherever any body of persons (1) having legal authority (2) to determine questions affecting rights of subjects and (3) having the duty to act judicially (4) act in excess of their legal authority a writ of certiorari may issue". It will be seen from the ingredients of judicial act that there must be a duty to act judicially. A tribunal, therefore,

exercising a judicial or quasi-judicial act cannot decide against the rights of 1 party without giving him a hearing or an opportunity to represent his case in the manner known to law. If the provisions of a particular statute or rules made thereunder do not provide for it, principles of natural justice demand it. Any such order made without hearing the affected parties would be void. As a writ of certiorari" will be granted to remove the record of proceedings of an inferior tribunal or authority exercising judicial or quasi judicial acts, ex hypothesi it follows that the High Court in exercising its jurisdiction shall also act judicially in disposing of the proceedings before it. It is implicit in such a proceeding that a tribunal or authority which is directed to transmit the records must be a party in the writ proceedings, for, without giving notice to it, the record of proceedings cannot be brought to the High Court. It is said that in an appeal against the decree of a subordinate court, the court that passed the decree need not be made a party and on the same parity of reasoning it is contended that a tribunal need not also be made a party in a writ proceeding. But there is an essential distinction between an appeal against a decree of a subordinate court and a writ of certiorari to quash the order of a tribunal or authority: in the former, the proceedings are regulated by the Code of Civil Procedure and the court making the order is directly subordinate to the appellate court and ordinarily acts within its bounds, though sometimes wrongly or even illegally, but in the case of the latter, a writ of certiorari is issued to quash the order of a tribunal, which is ordinarily outside the appellate or revisional jurisdiction of the court and the order is ;set aside on the ground that the tribunal or authority acted Without or in excess of jurisdiction. If such a tribunal- or

authority is not made party to the writ, it can easily ignore the order of the High Court quashing its order, for not being, a party, it will not be liable, to contempt. In these circumstances whoever else is a necessary party or not the authority or tribunal is certainly a necessary party to such a proceeding. In this case, the Board of Revenue and the Commissioner of Excise were rightly, made parties in the writ petition."

"11. The long established English practice, which the High Courts in our country have adopted all along, accepts the said distinction between the necessary and the proper party in a writ of certiorari. The English practice is recorded in Halsbury's Laws of England, Vol. 11, 3rd Edn. (Lord Simonds') thus in paragraph 136:

"The notice of motion or summons must be served on all persons directly affected, and where it relates to any proceedings in or before a court, and the object is either to compel the court or an officer thereof to do any act in relation to the proceedings or to quash them or any order made therein, the notice of motion or summons must be served on the clerk or registrar of the court, the other parties to the proceedings, and (where any objection to the conduct of the judge is to be made) on the judge.....".

In paragraph 140 it is stated :

"On the hearing of the summons or motion for an order of mandamus, prohibition or certiorari, counsel in support begins and has a right of reply. Any person who desires to be heard in opposition, and appears to the Court or judge to be a proper per-son to be heard, is to be heard not withstanding that he has not been served with the notice or summons, and will be liable to costs in the discretion of the Court or judge if the order should be

made.....”

So too, the Rules made by the Patna High Court require that a party against whom relief is sought should be named in the petition. The relevant Rules read thus:

Rule 3. Application under Article 226 of the Constitution shall be registered as Miscellaneous judicial Cases or Criminal Miscellaneous Cases as the case may be.

Rule 4. Application shall, soon after it is registered, be posted for orders before a Division Bench as to issue of notice to the respondents. The Court may either direct notice to issue and pass such interim order as it may deem necessary or reject the application.

Rule 5. The notice of the application shall be served on all persons directly affected and on such other persons as the Court may direct.

Both the English rules and the rules framed by the Patna High Court lay down that persons who are directly affected or against whom relief is sought should be named in the petition, that is all necessary parties should be impleaded in the petition and notice served on them. In "The law of Extraordinary Legal Remedies" by Ferris, the procedure in the matter of impleading parties is clearly described at p.201 thus:

"Those parties whose action is to be reviewed and who are interested therein and affected thereby, and in whose possession the record of Such action remains, are not only proper, but necessary parties. It is to such parties that notice to show cause against the issuance of the writ must be given, and they are the only parties who may make return, or who may demur. The omission to make parties those officers whose proceedings it is sought to direct and control, goes to the very right of the relief sought. But in order that the court may do

ample and complete justice, and render judgment which will be binding on all persons concerned, all persons who are parties to the record, or who are interested in maintaining the regularity of the proceedings of which a review is sought, should be made parties respondent."

This passage indicates that both the authority whose order is sought to be quashed and the persons who are interested in maintaining the regularity of the proceeding of which a review is sought should be added as parties in a writ proceeding. A division Bench of the Bombay High Court in Ahmedalli V. M.D. Lalkaka, AIR 1954 Bom 33 at p 34 laid down the procedure thus:

"I think we should lay down the rule of practice that whenever a writ is sought challenging the order of a Tribunal, the Tribunal must always be a necessary party to the petition. It is difficult to understand how under any circumstances the Tribunal would not be a necessary party when the petitioner wants the order of the Tribunal to be quashed or to be called in question. It is equally clear that all parties affected by that order should also be necessary parties to the petition."

A Full Bench of the Nagpur High Court in Kanglu Baula v. Chief Executive Officer, AIR 1955 Nag 49 (FB), held that though the elections to various electoral divisions were void the petition would have to be dismissed on the short ground that per-sons who were declared elected from the various constituencies were not joined as parties to the petition arid had not been given an opportunity to be heard before the order adverse to them was passed. The said decisions also support the view we have expressed."

66. He has then relied upon paragraph Nos.31, 38 to 41 and 43 in ***Jogendrasinhji Vijaysinghji vs. State of Gujarat and others***, ***(2015) 9 SCC 1***, which read thus:-

> *"31. The next facet pertains to the impleadment of the Court or tribunal as a party. The special Bench has held that even if application is described as one not only under article 226 of the Constitution, but also under article 227, the Court or tribunal whose order is sought to be quashed, if not arrayed as a party, the application would not be maintainable as one of the relief of certiorari, in the absence of the concerned tribunal or Court as a party, cannot be granted. It has also been held that if the Court or tribunal has not been impleaded as party- respondent in the main writ petition, then by merely impleading such Court or tribunal for the first time in letters patent appeal would not change the nature and character of the proceeding before the learned Single Judge and, therefore, intra-court appeal would not be maintainable. To arrive at the said conclusion, the High Court has referred to Messrs. Ghaio Mal & Sons v. State of Delhi and others, Hari Vishnu Kamath (supra) and relied upon a four-Judge Bench judgment in Udit Narain Singh Malpaharia v. Addl. Member, Board of Revenue."*
>
> *"38. After so stating, the four-Judge Bench referred to English practice as recorded in Halsbury's Laws of England, Vol. 11, 3rd Edn. (Lord Simonds') and a Division Bench judgment of the Bombay High Court in Ahmedalli v. M.D. Lalkaka and a Full Bench decision of Nagpur High Court in Kanglu Baula Kotwal v. Janpad Sabha, Durg and summarized thus: (Udit Narain Singh Malpaharia case, AIR p.790,*

para 12)

"To summarise: in a writ of certiorari not only the tribunal or authority whose order is sought to be quashed but also parties in whose favour the said order is issued are necessary parties. But it is in the discretion of the court to add or implead proper parties for completely settling all the questions that may be involved in the controversy either suo motu or on the application of a party to the writ or an application filed at the instance of such proper party."

39. *The High Court, as we find, relied on the aforesaid decision to form the foundation that unless a Court or a tribunal is made a party, the proceeding is not maintainable. What has been stated in Hari Vishnu Kamath (supra), which we have reproduced hereinbefore is that where plain question on issuing directions arises, it is conceivable that there should be in existence a person or authority to whom such directions could be issued. The suggestion that non-existence of a tribunal might operate as a bar to issue such directions is not correct as the true scope of certiorari is that it merely demolishes the offending order and hence, the presence of the offender before the Court, though proper is not necessary for the exercise of the jurisdiction or to render its determination effective.*

40. *In Udit Narain Singh (supra), the fulcrum of the controversy was non- impleadment of the persons in whose favour the Board of Revenue had passed a favourable order. There was violation of fundamental principles of natural justice. A party cannot be visited with any kind of adverse order in a proceeding without he being arrayed as a party. As we understand in Hari Vishnu Kamath (supra), the seven-Judge Bench opined that for issuance of writ of*

certiorari, a tribunal, for issue of purpose of calling of record, is a proper party, and even if the tribunal has ceased to exist, there would be some one incharge of the tribunal from whom the records can be requisitioned and who is bound in law to send the records. The larger Bench has clearly stated that while issuing a writ of certiorari, the Court merely demolishes the defending order, the presence of the offender before the Court though proper but is not necessary for exercise of jurisdiction. The said finding was recorded in the context of a tribunal.

41. In this context, we may profitably refer to the decision in Savitri Devi (supra) wherein a three-Judge Bench, though in a different context, had observed thus:-

"14. Before parting with this case, it is necessary for us to point out one aspect of the matter which is rather disturbing. In the writ petition filed in the High Court as well as the special leave petition filed in this Court, the District Judge, Gorakhpur and the 4th Additional Civil Judge (Junior Division), Gorakhpur are shown as respondents and in the special leave petition, they are shown as contesting respondents. There was no necessity for impleading the judicial officers who disposed of the matter in a civil proceeding when the writ petition was filed in the High Court; nor is there any justification for impleading them as parties in the special leave petition and describing them as contesting respondents. We do not approve of the course adopted by the petitioner which would cause unnecessary disturbance to the functions of the judicial officers concerned. They cannot be in any way equated to the officials of the Government. It is high time that the practice of impleading judicial officers disposing of civil proceedings as parties to writ petitions under

Article 226 of the Constitution of India or special leave petitions under Article 136 of the Constitution of India was stopped. We are strongly deprecating such a practice.""

"43. As we notice, the decisions rendered in Hari Vishnu Kamath (supra), Udit Narain Singh (supra) and Savitri Devi (supra) have to be properly understood. In Hari Vishnu Kamath (supra), the larger Bench was dealing with a case that arose from Election Tribunal which had ceased to exist and expressed the view how it is a proper party. In Udit Narain Singh (supra), the Court was really dwelling upon the controversy with regard to the impleadment of parties in whose favour orders had been passed and in that context observed that tribunal is a necessary party. In Savitri Devi (supra), the Court took exception to courts and tribunals being made parties. It is apposite to note here that propositions laid down in each case has to be understood in proper perspective. Civil courts, which decide matters, are courts in the strictest sense of the term. Neither the court nor the Presiding Officer defends the order before the superior court it does not contest. If the High Court, in exercise of its writ jurisdiction or revisional jurisdiction, as the case may be, calls for the records, the same can always be called for by the High court without the Court or the Presiding Officer being impleaded as a party. Similarly, with the passage of time there have been many a tribunal which only adjudicate and they have nothing to do with the lis. We may cite few examples; the tribunals constituted under the Administrative Tribunals Act, 1985, the Custom, Excise & Service Tax Appellate Tribunal, the Income Tax Appellate Tribunals, the Sales Tax Tribunal and such others. Every adjudicating authority may be nomenclatured as a tribunal but the said

> *authority(ies) are different that pure and simple adjudicating authorities and that is why they are called the authorities. An Income Tax Commissioner, whatever rank he may be holding, when he adjudicates, he has to be made a party, for he can defend his order. He is entitled to contest. There are many authorities under many a statute. Therefore, the proposition that can safely be culled out is that the authorities or the tribunals, who in law are entitled to defend the orders passed by them, are necessary parties and if they are not arrayed as parties, the writ petition can be treated to be not maintainable or the court may grant liberty to implead them as parties in exercise of its discretion. There are tribunals which are not at all required to defend their own order, and in that case such tribunals need not be arrayed as parties. To give another example:- in certain enactments, the District Judges function as Election Tribunals from whose orders a revision or a writ may lie depending upon the provisions in the Act. In such a situation, the superior court, that is the High Court, even if required to call for the records, the District Judge need not be a party. Thus, in essence, when a tribunal or authority is required to defend its own order, it is to be made a party failing which the proceeding before the High Court would be regarded as not maintainable."*

67. He then points out Section 255(4) of the Income Tax Act, 1961, which is almost identical to Section 26 of the Administrative Tribunals Act, 1985. He refers to ***Dynavision Ltd. vs. Income Tax Appellate Tribunal and others, 2008 SCC***

Online Mad 1041 : (2008) 304 ITR 350 and adverts to paragraph Nos.9 to 11 and 13 to 15, which are as under:-

> "*9. As, there is a difference of opinion between the members of the Division Bench, they requested the President under section 255(4) of the Act to constitute a third member for resolving the opinion expressed by each one of them. According to the President, there is a difference of opinion while identifying the differences between the members of the Division Bench. As there is no uniformity even in identifying the points, the President has formulated the points of difference between the Division Bench-Members and decided the case on the merits. Aggrieved by the same, the petitioner has filed W.P. No. 7060 of 2000 challenging the order of the third member.*
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> *10. Learned counsel appearing for the petitioner submitted that the Third member has no right to go beyond the scope of reference in a matter of difference of opinion between the judicial member and the accountant member. He has to consider only the difference of opinion stated by the members. So, the third member is wrong in formulating the questions on his own and deciding the case as against the assessee. It is, therefore, submitted that the order passed by the third member is illegal and without justification and the same should be quashed. Learned counsel also submitted that since the third member exceeded his jurisdiction, the order passed by him has to be set aside with a direction to the third member to reconsider the matter afresh and also further direction to the third member to consider only the difference of opinion stated by the respective members..*
>
> *11. Learned counsel appearing for the Revenue submitted that even though the third member re-framed the difference of opinion, the sum and sub stance of the issue involved is the same, therefore,*

the order of the third member is in conformity with law and the same should be affirmed. She further stated that in view of the framing the new issues by the third member, she has no objection to remand the matter with a direction to the third member to consider only the difference of opinion referred to by the judicial member and the accountant member."

"13. From a reading of the above section makes it clear that whenever the members or Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority, if there is a majority. If the members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President of the Appellate Tribunal for hearing on such point or points by one or more of the other members of the Appellate Tribunal, and such point or points shall be decided according to the opinion of the majority of the members of the Appellate Tribunal who have heard the case including the persons, who first heard it. The order of reference to the third member shall contain the difference of opinion between the members of the Bench. The President or the third member has no right to go beyond the scope of reference and they have to consider only the difference of opinion stated by the members of the Bench. Section 255(4) does not vest such power with the President or the third member. They have also no right to formulate the question on their own. Framing the question on their own goes beyond the jurisdiction. The third member must confine himself to the order of reference. Therefore, he has no right to enlarge, restrict and modify and/or formulate any question of law on his own on the difference of opinion referred to by the members of the Tribunal. In this case, the Judicial and the accountant member had the difference of opinion and formulated the

questions. The Third Member in paragraph 2 of the order has held as follows:

"2. When there is difference of opinion even while identifying the differences between the members of the Division Bench, what is to be done was earlier decided by me as a third member in a case now found reported in Chetna Enterprises v. ITO, [1999] 238 ITR (AT) 103 (Patna). At page 125 of the reported decision, after extracting the provision of section 255(4) of the Income-tax Act, I held that in such a case the solution should be found out as follows:

"It would show that the point or points of difference shall be referred by the President to a third member. Suppose, if there is no unanimity even in identifying the point or points of difference among the differing members, just like in this case, then I feel it is the duty of the President to identify the real points of difference and refer them to a third member whom he may appoint under the powers given to him under section 255(4)."

Then, I identified the real differing points between the differing members and formulated them for decision of the third member, similarly following the said precedent, which was not either disapproved or set aside by the Hon'ble High Court or Supreme Court, I feel that I should follow the same procedure even in this case and, therefore, I went through the whole record, orders of the differing members and I found out that following are the points of difference between the differing Division Bench members and these differences are to be resolved by the third member:

1. Whether the assessee debited Rs. 4,59,10,736 to the purchase account towards customs duty, added the said sum to the closing stock value and debited the said sum to the profit and loss account?

2. When did the liability to pay customs duty arise

to the assessee?
3. Whether there was change of method of accounting adopted by the assessee while accounting customs duty liability in this assessment year?
4. Whether out of Rs. 4,59,10,736, the assessee paid Rs. 3,34,13,672 between the date of close of the accounting year and the date of filing return by the assessee under section 139(1) of the Income-tax Act for the assessment year 1990-91, and it is, the asses see was correctly allowed deduction of Rs. 3,34,13,672 as customs duty paid under section 43B of the Income-tax Act ?
and
5. Whether the impugned sum of Rs. 1,24,97,664 remained to be paid as customs duty and whether its disallowance under section 438 on the ground of non-payment within the time allowed under the provisions of section 438 is correct under law ?"

14. *The High Court of Madras, in the case of ITO v. Vice-President, ITAT, [1985] 155 ITR 310, considered the scope of section 255(4) of the Income-tax Act, 1961, wherein it has been held that the power of the third member is confined to giving of a decision on the points on which the members of the Tribunal had differed and which had been formulated by them as the question for the decision of the third member and held as follows (page 314):*

"Admittedly, in this case, the President of the Appellate Tribunal has referred the matter to the third member (Thiru D. Rangaswamy) to hear on the point or points on which the two members of the Tribunal had differed and on the third member giving his decision on the point or points referred to it, the appeal should be taken to have been decided by the opinion of the majority of the members of the Appellate Tribunal who have heard the case including those who first heard it. Thus, the power of the third member to whom the

case is referred is confined to giving of a decision on the point on which the members had differed and which has been formulated them as a question for the decision of a third member.

In this case, the third member has proceeded on the basis that the question referred by the two members of the Tribunal is wide enough to enable the assessee to raise additional points and, therefore, the additional points pressed by the assessee should be considered. Even so, we are of the view that the third member should have pronounced his opinion on the point of difference as also on the additional points raised by the assessee. But without doing so, the third member has remitted the matter to the original two members of the Tribunal for a fresh decision. We are of the view that the third member, who is functioning under section 255(4) of the Act does not have such a power as to direct the two members of the Tribunal who had differed on the point referred to the third member, to decide a particular point or act in a particular manner. Such a power vests only with an appellate or revisional authorities, if there are any. The power of the third member to whom the points of difference have been referred cannot act as if it were an appellate authority over the two members of the Tribunal and direct them to rehear and dispose of the matter afresh. No doubt, the third member, in this case, happened to be the Vice-President. But that will not clothe him with the power to give directions or remit the matters while functioning under section 255(4) of the Act. The learned Advocate General appearing for the assessee would say that section 255(4) of the Act should be read in conjunction with section 254(1) of the Act which deals with the powers of the Appellate Tribunal. According to him, the third member to whom the points of difference have been referred, should be taken to have all the powers of the Tribunal under section 254(1) and

as such the Tribunal can pass such orders as it thinks fit. Therefore, the third member has got the power to pass any order as he thinks fit. The submission of the learned Advocate-General is in direct conflict with the language and the object behind section 255(4) of the Act. When section 255(4) says that the third member shall decide the points of difference referred to him and the decision of the Tribunal will be as per the majority opinion, the third member is expected to give his decision, whatever it is, so that the majority opinion could be determined for the purpose of disposal of the appeal before the Tribunal. If, based on the language of section 254(1) of the Act, we were to hold that the third member can pass any order he likes, then such an order will not serve the purpose for which section 255(4) of the Act was introduced in the statute book. It is well established that the provisions of the Act have to be construed harmoniously so as to give effect to all the provisions of the Act and to carry out the objects sought to be achieved by the various statutory provisions. In this case, the third member has not chosen to give his opinion one way or the other either on the point of dispute, i.e., on the mode of computation of the capital gains or on the new points urged by the assessee before him. If the third member has entertained the new points and has given his opinion one way or the other, as also on the point of dispute referred to it, it can be said that he has acted within his jurisdiction, though it may be open to the Revenue to contend before the appropriate forum that the third member should not have entertained the new points which were not urged before the two members of the original Tribunal. In this case, as already stated, without giving his decision on any of the points the third member has merely remitted the matter to the two members of the Tribunal for a fresh consideration on all the points. We do not see how the third member to

whom the point of dispute is referred under section 255(4) can claim to have any larger power than the two members who originally constituted the Tribunal. The third member has no higher power or jurisdiction than the members who originally constituted the Tribunal, and therefore, the remit order directing them to rehear the matter will be clearly outside the jurisdiction of the third member. Hence, we cannot sustain legally the order of the third member, in this case, remitting the matter to the two members of the original Tribunal without expressing any opinion on the question which he had to consider."

15. *Similar view was also taken by the Allahabad High Court, in the case of Jan Mohammed v. CIT, (1953] 23 ITR 15, and considered the scope of the provision of section 5A(7) of the Act, corresponding to section 255(4) of the new Act, wherein it was held that the third member can decide only the point that had been referred to him and he cannot formulate the new points himself and reads as follows (page 25):*

"The third member could, therefore, decide only the point that had been referred to him and he could not formulate a new point for himself on which he could base his decision. It appears to us to be further clear from a reading of the sub-section quoted above that, after the decision of the point or points referred to him by the third Member, the case should go back to the original Tribunal because so far as we can see, the third member has not been given any right to decide the appeal. According to section 5A(6) of the Income-tax Act, the appeal must be decided by the Tribunal which must consist of a Bench of not less than two members. As we have already said, the point referred to the third member was whether there could be a presumption legally drawn from the materials on the record that the bus belonged to the 'appellant', and on that point the third

member having agreed with Shri Kalbe Abbas that no such presumption could be legally drawn, the majority view was in favour of the assessee. The last part of section 5A(7) of the Act provides that the point or points have to be decided according to the opinion of the majority of the members of the Tribunal who had heard the case including those who had first heard it. After the opinion of the third member had been obtained the case should have gone back to the Tribunal for its final orders."”

68. He has then referred to ***H. Chandunmul vs. Commissioner of Income Tax, 1953 The Indian Law Reports (Vol.XXXII) Patna Series 445***. His contention, therefore, is that if Section 26 is to be invoked, it is not for this Court to frame the points/ divergent opinions, which is for the members of the Tribunal to formalize. Unless the members set out the points of difference between the two, this Court cannot frame such points for reference to the third Member under Section 26. As has been held in H. Chandunmul (supra), even the Chairperson/ President cannot frame the points and it has to be left to the members of the Tribunal who have to forward the points on which they differ, to the Chairperson for adjudication.

69. In the above backdrop, Shri Rajadhyaksha contends that if the DDCs desire to invoke Section 26 of the Act, they would have to implead the Tribunal as a Respondent in the present proceedings. This Court will have to issue notices to the Tribunal calling upon it to explain as to why the points were not formulated and whether, Section 26 was lost sight off. After considering the explanation of the Tribunal, this Court can conclude on the issue referable to Section 26 of the Act. He, therefore, sums up on this issue by contending that the petitions preferred by the DDCs will have to be dismissed for non joinder of parties.

Submissions of Shri Rajadhyaksha on the 1977 Rules

70. Shri Rajadhyaksha has contended that Rule 13(5) is the determination test for deciding the seniority inter-se the Tahasildar [on promotion to Deputy Collector (PDC)] and the DDC. The promotional ladder begins from the Tahasildar- Deputy Collector- Deputy Collector (Selection Grade)- Additional Collector- Additional Collector (Selection Grade) and then the Collector.

71. He contends that the terms ‘permanent’ post, ‘temporary’ post and ‘officiating’ posts are not defined under the 1977 Rules. He adverts to Rule 9(40) “permanent post” and 9(53) “temporary post” of the Maharashtra Civil Services (General Conditions of Services) Rules, 1981 (for short “the MCS Rules of 1981”), which read as under:-

> *“(40) Permanent Post means a post carrying a definite rate of pay sanctioned without limit of time.”*
>
> *“(53) Temporary post means a post carrying a definite rate of pay sanctioned for a limited time.”*
>
> *“Note- Substantive appointments to temporary posts should be made in a limited number of cases only, as for example, when posts are, to all intents and purposes, quasi-permanent or when they have been sanctioned for a period of not less than, or there is reason to believe that they will not terminate within a period of three years. In all other cases, appointments in temporary posts should be made in an officiating capacity only.*
>
> *Instruction.- The benefit of substantive appointments to temporary posts contemplated in the above note should not be allowed to be enjoyed by more than one person simultaneously. Therefore, where a Government servant has already been appointed substantively to a temporary post and there is a temporary interruption in his tenure of the post, it would not be proper to appoint another Government servant substantively to the post during such temporary interruption. For this purpose, interruptions which are likely to last for less than 3 years may be treated as*

> *temporary. It follows, therefore, that where a Government servant is already appointed substantively to temporary post a second Government servant should not be appointed substantively to it unless the previous holder of the post has been transferred from it permanently or unless he has been transferred temporarily and there is reason to believe that he will remain absent from the post for a period of not less than three years."*

72. According to him, the definition of 'continuous service' under Rule 2(d) of the 1977 Rules read with the proviso there below and Rule 2(i) defining "fortuitous service", would mean that the service between the commencement of officiating as a Deputy Collector until the deemed date is granted.

73. He refers to clause 5.2 of the impugned final list dated 31.12.2020 and points out that the State Government has taken a conscious decision that it would not take a review of the PDC under Rule 12. This categoric stand renders the select list as defined under Rule 2(n), final. He then refers to the definition of 'cadre' under Rule 9(5) and 'officiate' under Rule 9(35) of the MCS Rules, 1981.

74. He further contends that the quota of Deputy

Collectors would include the sanctioned strength as well as the adhoc/ temporary appointments by way of promotions of the Tahasildars. He adverts to the judgment of the Tribunal delivered in O.A. No.526/ 2004 dated 17.04.2008 wherein, the Tribunal has concluded in paragraphs 55 and 56 that the 'quota' would include both these categories. With this submission, he contends that the rule of appointing the Direct Deputy Collectors in between 35% to 50% and commensurate appointments on temporary promotions of the PDC, would be included in the said quota. Hence, the number of posts of Deputy Collectors would not be restricted to 514 for the period 1999 upto 2012.

75. He has relied upon the judgment delivered in ***O.P. Singla and another vs. Union of India and others, (1984) 4 SCC 450*** and has relied upon paragraph Nos.1 to 3, 8 and 16 to 18, which read as under:-

> *"1. Once again, we are back to the irksome question of inter se seniority between promotees and direct recruits. The contestants, this time, are judicial officers of Delhi. Our familiarity, generally, with the difficulties in the way of judicial officers and our awareness of their just aspirations make our task difficult and sensitive.*
>
> *2. The conclusion to which we have come in this*

judgment is not different from the one reached by our learned Brother Sabyasachi Mukharji. In this Judgment, Brother Mukharji has discussed, more fully, the various aspects of this matter as also the decisions which were cited before us. Our reasons for writing this separate opinion are, the general importance of this case. the fact that it concerns the higher judiciary and our respectful disagreement with Brother Mukharji on the interpretation of some of the provisions with which we are concerned in these Writ Petitions.

3. There are many decisions bearing upon the familiar controversy between promotees and direct recruits and this will be one more. Perhaps, just another. Since those various decisions have not succeeded in finding a satisfactory solution to the controversy, we would do well by confining our attention to the language and scheme of the rules which are under scrutiny herein, instead of seeking to derive a principle of universal application to the cases like those before us. Previous judgments of this Court are, of course, binding to the extent that they are relevant and they cannot be ignored. But, if they turn upon their own facts, the general set-up of the particular service, its historical development and the words of the impugned provisions, no useful purpose will be served by discussing those cases at length, merely to justify an observation at the end that they have no application and are distinguishable."

"8. Rules 7 and 8 which are crucial to the controversy between the promotees and direct recruits read thus :

"Rule 7- Regular Recruitment:-

Recruitment after the initial recruitment shall be made :

(a) by promotion on the basis of selection from

members of the Delhi Judicial Service, who have completed not less than 10 years of Service in the Delhi Judicial Service.
(b) by direct recruitment from the Bar.
Provided that not more than 1/3rd of the substantive posts in the Service shall be held by direct recruits."
"Rule 8-(1) The inter-se seniority of members of the Delhi Judicial Service promoted to the Service shall be the same as in the Delhi Judicial Service.
(2) The seniority of direct recruits vis-a-vis promotees shall be determined in the order of rotation of vacancies between the direct recruits and promotees based on the quotas of vacancies reserved for both categories by Rule 7 provided that the first available vacancy will be filled by a direct recruit and the next two vacancies by promotees and so on."'

"16. Logically, we must begin this inquiry with the question as to the interpretation of the proviso to Rule 7. Does that proviso prescribe a quota or does it merely provide for a ceiling ? In other words, does the proviso require that, at any given point of time, 1/3rd of the substantive posts in the Service shall be reserved for direct recruits or does it only stipulate that the posts held by direct recruits shall not be more than 1/3rd of the total number of substantive posts in the Service? The proviso reads thus:

"Provided that not more than 1/3rd of the substantive posts in the Service shall be held by direct recruits."

This language is more consistent with the contention of the promotees that the proviso merely prescribes, by way of imposing a ceiling, that the direct recruits shall not hold more than 1/3rd of the substantive posts. Experience shows that any provision which is intended to prescribe a quota, generally

provides that, for example, "1/3rd of the substantive posts shall be filled in by direct recruitment." A quota provision does not use the negative language, as the proviso in the instant case does, that "not more than" one-third of the substantive posts in the Service shall be held by direct recruits.

17. If the matter were to rest with the proviso, its interpretation would have to be that it does not prescribe a quota for direct recruits : it only enables the appointment of direct recruits to substantive posts so that, they shall not hold more than 1/3rd of the total number of substantive posts in the Service. However, it is well recognised that, when a rule or a section is a part of an integral scheme, it should not be considered or construed in isolation. One must have regard to the scheme of the fasciculus of the relevant rules or sections in order to determine the true meaning of any one or more of them. An isolated consideration of a provision leads to the risk of some other inter-related provision becoming otiose or devoid of meaning. That makes it necessary to call attention to the very next rule, namely, rule 8. It provides by clause 2 that :

"The seniority of direct recruits vis-a-vis promotees shall be determined in the order of rotation of vacancies between the direct recruits and promotees based on the quotas of vacancies reserved for both categories by Rule 7 provided that the first available vacancy will be filled by a direct recruit and the next two vacancies by promotees and so on."

This provision leaves no doubt that the overall scheme of the rules and the true intendment of the proviso to Rule 7 is that 1/3rd of the substantive posts in the Service must be reserved for direct recruits. Otherwise, there would neither be any occasion nor any

justification for rotating vacancies between direct recruits and promotees. Rule 8 (2), which deals with fixation of seniority amongst the members of the Service, provides, as it were, a key to the interpretation of the proviso to Rule 7 by saying that the proviso prescribes "quotas" and reserves vacancies for both categories. The language of the proviso to Rule 7 is certainly not felicitous and is unconventional if its intention was to prescribe a quota for direct recruits. But the proviso, as I have stated earlier, must be read along with Rule 8 (2) since the two provisions are inter-related. Their combined reading yields but one result, that the proviso prescribes a quota of 1/3rd for direct recruits.

18. *The process of reading the Rules as parts of a connected whole does not end with Rules 7 and 8. Rules 16 and 17 are also relevant for the present purpose and have, indeed, an important bearing on the question of reservation of vacancies for direct recruits to the extent of one-third of the substantive posts in the Service. Clause (1) of Rule 16 confers power upon the Administrator to create temporary posts in the Service. By clause (2) of Rule 16, such posts are required to be filled, in consultation with the High Court, from amongst the members of the Delhi Judicial Service, that is to say, the promotees. Rule 17, which is in the nature of a non-obstante provision, provides that not withstanding anything contained in the Rules, the, Administrator may, in consultation with the High Court, fill substantive vacancies in the Service by making temporary appointments thereto from amongst the members of the Delhi Judicial Service. The position which emerges from the provisions contained in Rules 16 and 17 is that it is permissible to create temporary posts in the Service and, even substantive vacancies in the Service can be filled by making*

temporary appointments. The twofold restriction on this dual power is that the High Court must be consulted and such appointments must be made from amongst the promotees only. If temporary appointment to the Service, either in temporary posts or in substantive vacancies, can be made within the framework of the Rules and have to be made, if at all, from amongst the promotees and promotees only, the quota rule contained in the proviso to Rule 7 must inevitably break down when such appointments are made. The simple reason leading to that consequence is that direct recruits cannot be appointed either to temporary posts in the Service or to substantive vacancies in the Service which are filled in by making temporary appointments. Thus, even though the proviso to Rule 7 prescribes a quota of one-third for direct recruits, Rules 16 and 17 permit the non- observance of the quota rule in the circumstances stated in these rules."

76. He refers to paragraph Nos.2, 4, 7, 10, 11, 13 and 14 in ***V. Bhasker Rao and others vs. State of A.P. and others, (1993) 3 SCC 307***, which read as under:-

"2. The recruitment to the Andhra Pradesh Higher Judicial Service (the Service) is governed by the Rules called "The Andhra Pradesh State Higher Judicial Service Special Rules" (the Special Rules). Rules 1, 2, 4 and 6 of the Special Rules which are relevant are as under:
"Rule 1. Constitution:- The service shall consist of the following categories:-
Category-1 :- District and Sessions Judges 1st Grade.

Category-II :- District and Sessions Judges, Second Grade including Chairman, Andhra Pradesh Sales Tax Appellate Tribunal, Chief Judge, City Civil Court, Additional Chief Judge, City Civil Court, Chief Judge, Court of small Causes, Chief City Magistrate, Chairman, Tribunal for Disciplinary Proceedings, Presiding Officers, Labour Courts and Addl. District and Sessions Judges.

Rule 2. Appointment :- (a) Appointment to Category-I shall be made by promotion from Category-II and appointment to Category-II shall be made:-

(i) by transfer from among:-

(a) Sub-Judges in the Andhra State Judicial Service; or in the Hyderabad State Judicial Service; and

(ii) by direct recruitment from the Bar:

Provided that 33-1/3% of the total number of permanent posts shall be filed or reserved to be filled by direct recruitment.

Explanation:- In the determination of 33-1/3% of the total number of permanent posts, fractions exceeding one-half shall be counted as one and other fractions shall be disregarded.

(b) All promotions shall be made on grounds of merit and ability, seniority being considered only when merit and ability are approximately equal.

Rule 4. Probation:- Every person appointed to Category-II otherwise than by transfer, shall, from the date on which he joins duty be on probation for a total period of one year on duty.

Rule 6. Seniority:- The seniority of a person appointed to Category 1 or Category 2 shall be determined with reference to the date from which he was continuously on duty in that category."'

"4. On a plain reading of the Special Rules the salient features of the Service can be culled out

as under:

(1) Rule 1 provides for the constitution of the Service. All the posts of District and Sessions Judges Second grade created from time to time are part of the Service. The natural corollary is that the Service consists of permanent as well as temporary posts.

(2) The recruitment to Category-II of the service is by transfer from amongst the Subordinate Judges and also by direct recruits from the Bar.

(3) 33 1/3% of the total number of permanent posts in Category-II of the Service are to be filled by way of direct recruitment.

(4) The seniority under Rule 6 is to be determined with reference to the date from which a person is continuously on duty. Whether the person is continuously on duty against a temporary post or permanent post is of no consequence. A person is entitled to the fixation of his seniority on the basis of continuous length of service rendered either against permanent post or temporary post."

"7. Mr. P.P. Rao, learned counsel for the petitioners has raised the following contentions for our consideration:

(1) That the Service consists of only permanent posts under the Special Rules. There is no provision under the Special Rules for adding temporary posts to the cadre. The appointment of respondents to the posts of District and Sessions Judges Second grade on temporary basis can at best be treated under rule 10(a)(i) of the State Rules.

(2) The temporary service rendered by respondents.4 to 16 being outside the cadre cannot be counted towards seniority.

(3) Proviso to Rule 2 and Rule 6 of the Special Rules have to be read together and doing so the permanent vacancies having been

made available for respondents 4 to 16 in the year 1983 their service prior to that date cannot be counted towards seniority."

"10. Mr. Madava Reddy then contended that the petitioners were appointed in the years 1981 and since then till the year 1988 twelve seniority lists have been published showing the petitioners below respondents 4 to 16. At no point of time they challenged the seniority lists in the Court. Even when the writ petitions filed by Chalapathi and others were pending they did not intervene before the High Court. The petitioners, according to Mr. Madava Reddy, are guilty of gross delay and latches and as such are not entitled to get relief by way of this petition under Article 32 of the Constitution of India."

"11. We see considerable force in both the contentions raised by Mr. Madava Reddy. We are, however, of the view that it would be in the larger interest of the Service to dispose of this petition on merits."

"13. Having taken the view that the Service under the Special Rules consists of permanent as well as temporary posts the second contention of Mr. Rao looses its ground. Temporary, posts of District and Sessions Judges Second grade being part of the Service the seniority has to be counted on the basis of length of service including the service against a temporary post.

14. The third contention of Mr. Rao is mentioned to be rejected in view of Rule 6 of the Special Rules. Rule 6 of the Special Rules is in no way dependent on proviso to Rule 2 of the Special Rules. Both are to be operative independently. In the scheme of the rules the seniority rule is not dependent on the quota Rule. Quota has been provided for the direct recruits only

against permanent posts. The seniority rule permits the counting of total period of service from the date a person is on duty against a post in the category. Even though, the petitioners were appointed substantively to the service earlier to respondents 4 to 16 but in view of Rule 6 they cannot be declared senior on the basis of continuous length of service against temporary as well as permanent posts respondents 4 to 16 have been rightly given seniority above the petitioners."

77. The learned Senior Advocate Shri Rajadhyaksha has relied upon the following judgments:-

(a) ***Income Tax Officer, Company Circle-II, Madras vs. Vice President, ITAT***, 1983 SCC Online Mad 358.

(b) ***Jagannath Agarwalla vs. The King***, Volume XXIV Calcutta Weekly Notes 405.

(c) ***State of Orissa vs. Minaketan Patnaik***, AIR 1953 Orissa 160 : 1952 SCC Online Orissa 34.

(d) ***Miss Leena Khan vs. Union of India and others***, (1987) 2 SCC 402.

(e) ***LIC vs. S.S. Srivastava***, 1988 Supp SCC 1.

(f) ***Air India Cabin Crew Association vs. Yeshaswinee Merchant***, 2003 (6) SCC 277.

(g) ***Kusum Ingots & Alloys Ltd. vs. Union of India***

and another, (2004) 6 SCC 254.

(h) ***S. Ramanathan vs. Union of India and others***, (2001) 2 SCC 118.

Submissions of Shri Ajay S. Deshpande

78. Shri Ajay S. Deshpande, the learned Advocate representing the Petitioners in Writ Petition No.9163/2022 (Samiksha Chandrakar and Pandurang Kulkarni), besides his oral submissions, has tendered his Written Notes. The gist of his submissions is as under:-

(a) The Government Resolution dated 31.12.2020 determining the cadre strength has not been challenged. However, it was incorrectly stated that it was challenged in TA No.1/2021. For this incorrect statement, Shri Deshpande tenders an unconditional apology.

(b) The cadre strength is irrelevant because the Rules refer to 'permanent posts,' not 'cadre strength'. Thus, whether the cadre strength is 514 or 5014, it does not impact the case. This Court has to determine only 'permanent post'.

(c) The GR dated 31.12.2020 determining cadre strength year wise from 1980 onwards, retrospectively, is

irrelevant. Any retrospective determination of cadre strength or increase in cadre strength, is disapproved by the Honourable Supreme Court in ***Union of India vs. Hemraj Singh Chauhan, (2010) 4 SCC 290***.

(d) Merely because PDCs do not challenge the determination of cadre strength retrospectively, will not automatically validate the order of determining cadre strength, retrospectively.

(e) The permanent posts of Deputy Collectors were 413 as of 11.08.1980. The Tribunal erroneously presumed 514 posts. The Government failed to provide documents justifying this increase. The PDC never agreed the figure of permanent 514 posts.

(f) 26 posts of Leave Reserve Deputy Collectors have been abolished and 25 posts of Additional Collectors' cadre have been created and thus, the total number of permanent posts in the year 1992, were 383.

(g) The Government has come with a specific case that 514 posts of Deputy Collectors include 'permanent posts' as well as 'temporary posts' in the cadre, which in fact is a logical stand, which has not been accepted and endorsed by the Tribunal.

(h) The prejudice that is caused to the PDCs is because the Government has considered the ‘cadre strength’ and ‘permanent posts’ as synonyms, due to which the number of ‘permanent posts’ has suddenly increased from 383 in the year 1995 to 514 in 1999. The Government is not able to substantiate this sudden increase in the ‘permanent posts’.

(i) Since the Administrative Tribunal has categorically recorded a finding that, the promotions of the petitioners herein are neither 'adhoc' nor by way of 'stop gap arrangement' or in breach of the Rules, as a necessary corollary thereof, the entire service rendered by the petitioners will have to be counted for the purpose of seniority.

(j) Despite acknowledging the Petitioners’ valid promotions, the Tribunal did not appropriately address the seniority list, resulting in contradictions.

(k) Attempts were made by the PDCs to submit relevant documents demonstrating the increase in permanent posts, but the Government did not produce them. Though some of the documents were produced by the Government, same do not deal with conversion of the posts of Deputy Collectors into ‘permanent posts’, but they deal with creation of posts of Deputy

Collectors on ‘temporary basis’.

(l) The Petitioners respect this Court’s decision not to call for additional records from the Tribunal.

(m) One Mr.Waman Kadam, who was senior to Petitioner No.2 (Pandurang Kulkarni) was given a deemed date of promotion vide the order dated 24.06.2010. It is only and only when, the junior is promoted in a substantive capacity, the question of deemed date comes into play, and not otherwise. Therefore, on this count as well, promotions of the Petitioners cannot be considered to be either 'adhoc' or ‘fortuitous’.

(n) Government circulars dated 11.06.1993 and 06.06.2002 and the meeting proceedings dated 14.09.2009, confirm that the Petitioners’ promotions were substantive, not ‘adhoc’.

(o) The case of Mr. Jairam Vinayak Deshpande decided by the Tribunal at the Principal Seat in Original Application No.573/1999 supports the Petitioners’ contentions that their promotions were not ‘adhoc’.

(p) On 15.04.1999, the DPC was properly convened under the Government Resolution dated 03.03.1999, for considering the claims of the eligible Tahasildars for promotion

to the posts of Deputy Collectors, which culminated in promotions of the Petitioners, on 08th and 9th July, 1999. As such, the Petitioners' promotions followed proper procedures, making the claim of fortuitous promotions untenable.

(q) The Tribunal's finding regarding ineligibility of the Petitioners to be considered for promotion, lacks merit, as it ignored substantial affidavits and evidence on record.

(r) The Petitioners never feared reversion. Therefore, the observations of the Tribunal about reversion, are absolutely out of context.

(s) In so far as the nomination of IAS is concerned, the career-graph in the cadre of Deputy Collectors is significant and not merely the career-graph of Additional Collectors. This fact has been lost sight of by the Administrative Tribunal.

(t) Loss of opportunity to be considered for IAS nomination is indeed a cause, which was required to be taken into consideration by the Administrative Tribunal. However, it having failed to consider the same, intervention of this Hon'ble Court is inevitable.

(u) Once the Tribunal disapproves the method of determining seniority impugned before it, as an inevitable

consequence thereof, the impugned seniority list must have been quashed and set aside. Seniority in the cadre of Deputy Collectors continues to assume significance, till an incumbent enters in IAS cadre.

(v) If there is an illegality in determination of seniority, the question of adjusting equities becomes absolutely irrelevant. As such, the Tribunal is not expected to adjust the equities, as it does not have any such powers akin to the powers of the Honourable Supreme Court under Article 142 of the Constitution of India.

(w) In the process of satisfying everybody, although the Administrative Tribunal disapproved the method of preparing seniority list and holding the appointments of the Petitioners to be in a substantive capacity, declining to set aside the impugned seniority list, is indeed a blunder, warranting intervention of this Court to subserve the ends of justice and also to set the things in order by appropriately issuing directions to remove absurdity in the impugned decision.

(x) Though the Tribunal did not quash the impugned seniority list, but directed the State Government to remove the remark ‘fortuitous service’ against the names of the incumbents

at Serial Nos.582 to 700. This has resulted in yet another irony, inasmuch as, junior incumbents to the Petitioners become regular before the Petitioners and the seniors continue to be adhoc.

(y) The learned Member (Administration) had no justification to record the findings contrary to the pleadings on record, once he is a party to the decision rendered with consensus.

(z) Whether, at any point of time during last 20 years or more, inclusion of Petitioner No.2 or any of the Petitioners was ever a subject matter of challenge before any of the Court or Forum and a candid answer to the query is 'NO'. Therefore, the issue cannot be permitted to be opened after 20 long years, during which the Respondents have chosen to accept the position, without a slightest protest thereto.

(aa) Direct Recruits were given deemed date of promotion in the cadre of Deputy Collectors much latter in point of time, than the conferment of Selection Grade on the Petitioners promotees. Never ever grant of Selection Grade to the Petitioners PDC was the subject matter of challenge, and therefore, surreptitious change in the approach of the Government in the year 2018 or there about, and an attempt to

advocate the cause of the direct recruits, is beyond comprehension of a man of ordinary prudence.

(bb) If the permanent posts were 514 since long, then there was no necessity of appointing the Petitioners as Tahsildars. Having regard to the number of vacancies available then, from day one in the year 1994, the Petitioners promotees will have to be considered or treated as Deputy Collectors. This has a significance with Sub Rule 2 of Rule 4 of 1977 Rules, which requires the Government to determine the 'permanent posts' in the cadre in advance, so as to send a requisition to the Public Service Commission for selecting particular number of candidates.

79. We had raised certain queries, which are reflected in our order dated 28.06.2024. The learned Advocate Shri A.S. Deshpande submitted that the Petitioners (original Applicants) are unable to locate from the impugned judgment, despite reading it over and over again, any such finding concluding that the Applicants are not aggrieved parties. All the prayers put forth by them have been considered by the Tribunal, except the prayer for quashing the impugned seniority list. He adds that, however,

the Tribunal has observed that the Applicants do not have a surviving cause of action. This conclusion was founded on the statement made on behalf of the State Government in it's affidavit in reply dated 01.02.2022 filed by Mr.Madhav Veer, that none of the Applicants or the Respondents before the Tribunal would be reverted and hence, the Tribunal held that the Applicants do not have a surviving cause of action.

80. Shri Deshpande further submits that the seniority list dated 31.12.1998, has attained finality and there has been no challenge to the same. The circular dated 29.06.2010 is a testimony of the said seniority list being crystallized. This has also been reiterated in the impugned seniority list vide paragraph Nos.7.1 and 7.2. Paragraph Nos.11 and 20 of the affidavit in reply of the State Government before the Tribunal crystallize the said issue.

81. Shri Rajadhyakshya, the learned Senior Advocate, submits that it was the statement of the State Government before the Tribunal that none of the Applicants would be reverted. He submits that the Petition filed by Nitin Gunaji Mahajan (Writ

Petition No.12699/2022) concerns the issue as to how the seniority list in the cadre of Deputy Collectors, which includes PDC and DDC, ought to be compiled when the class of PDC and DDC have merged for the first time for the purpose of the seniority. He points out that the Tribunal has held in the impugned judgment (paragraph Nos.73-74) that, "*The method adopted by Respondent No.1 to reckon the seniority of PDC from the date of their absorption in the permanent posts is apparently contrary to the provisions in the Recruitment Rules. We, therefore, disapprove the same and declare it to be invalid and unsustainable.*"

82. With regard to the fate of the seniority list of Deputy Collectors dated 31.12.1998, Shri Rajadhyakshya submits that the same has been finalized on 29.06.2010, which is apparent from the circular dated 31.12.2020 (clauses 7.1 and 7.2) and paragraphs 11 and 12 of the affidavit in reply filed by the State.

83. The learned Senior Advocate Shri Apte confirms the contentions of Shri Deshpande and Shri Rajadhyakshya. He further points out the circular dated 25.04.2014 and submits that

the combined seniority list for the period 01.01.1999 to 31.12.2000 was confirmed. Earlier seniority lists have been referred to while concluding below paragraph No.3 as under:-

"३. सदर ज्येष्ठतासूची म.ना.से. (ज्येष्ठतेचे विनियमन) १९८२ मध्ये विहित केलेली सर्वसाधारण तत्वे आणि खालील बाबी विचारात घेऊन तयार करण्यात आली आहे.

१) ज्येष्ठतासूचीत नमूद अधिका-यांपैकी सरळ सेवा प्रविष्ट उप जिल्हाधिका-यांची महाराष्ट्र लोकसेवा आयोगाने निश्चित केलेल्या गुणवत्ता यादीप्रमाणे त्यांची आपआपसातील ज्येष्ठता राखण्यासाठी त्यांना समायोजित दिनांक देऊन ज्येष्ठता निश्चित करण्यात आली आहे.

२) पदोन्नत अधिका-यांच्या बाबतीत सामान्यतः त्यांच्या रुजू दिनांकानुसार तथापि निवडसूचीतील क्रम कायम ठेवून ज्येष्ठता निश्चित करण्यात आलेली आहे. परंतु एखाद्या ज्येष्ठ अधिका-यास पदोन्नतीचे आदेश काढल्यानंतर पदोन्नतीच्या पदावर रुजू होण्यासाठी प्रशासकीय कारणास्तव विलंब झाला असल्याचे निदर्शनास आणल्यास व आयुक्तांनी त्याची योग्य ती छाननी केली तर त्यांची आपसातील ज्येष्ठता कायम राखण्यासाठी आयुक्तांच्या अहवालाप्रमाणे त्यांना समायोजित तारखा देऊन त्यांची ज्येष्ठता निश्चित करण्यात येईल."

84. Below clauses 4, 5 and 6 of the circular dated 25.04.2014, objections were called for and it was apprised to all

that the seniority list would be confirmed after considering the objections.

85. It was after taking into account the objections, the seniority list for the period 01.01.1999 to 31.12.2000, was confirmed. He further submits that the DDCs are accepting the impugned seniority list dated 31.12.2020, but are not in agreement with the preamble to the extent it maintains that the seniority list for the period 01.01.1998 to 31.12.1998 is final. They cannot selectively accept few portions of the seniority list only to the extent it gives them an advantage. The original Applicants had prayed for quashing of the seniority list. This prayer was considered by the Division Bench of the Tribunal and there is no dispute between the members that the impugned list does not deserve to be quashed and set aside. He further submits that the impugned seniority list has been rightly prepared on the basis of the statutory Rules of 1977.

86. Shri Sapkal, the learned Senior Advocate submitted in rebuttal, on the basis of the gist set out in the brief written notes tendered to the Court, that the conditional promotion orders

have been issued in the past more than three decades and no right of seniority or pay fixation of the cadre of the Deputy Collector would accrue in favour of the PDC. Once the original Applicants have accepted conditional promotion orders, they are estopped from denying the applicability of the conditions imposed upon them. Since the State has considered the rules of 1977 framed under Article 309 of the Constitution of India, the original Applicants cannot claim to have entered into the cadre of Deputy Collectors on the basis of the provisional promotion orders. He further submits that the seniority list as on 31.12.1998, ought to have been modified and revised as per paragraph No.6 of the circular dated 29.06.2010. The seniority list as on 31.12.1998, cannot be said to have attained finality. Considering the statement of the State Government before the Tribunal that the PDC would not be reverted, the State Government has to stand by it's statement.

CONCLUSIONS

87. We have considered the extensive submissions of the learned advocates and have referred to the pleadings before the Tribunal as well as the analysis of the Tribunal in the impugned

judgment, which also comprises of a separate portion authored by the learned Member (Administrative). As is visible from the judgment, both the members have agreed that the Original Applicants have not suffered any legal injury and yet, the Tribunal has opened the whole issue that travels over a period of more than 30 years. It is also obvious that the Tribunal has not entertained both the Applications and has left the impugned seniority list, untouched.

88. The first and foremost issue to be considered by the Tribunal was as to whether, any legal injury was caused to the original four Applicants. Applicant Nos.1 and 2 were appointed as Tahsildar and they assumed office on 02.03.1994. Technically, they completed five years on 01.03.1999. They were appointed as Deputy Collectors on 08th July, 1999. They were promoted as Additional Collector on 30.01.2020. Similar is the case of the two Applicants in T.A. No.02/2021.

89. It is undisputed that they were promoted on temporary basis. The temporary promotion order of these four Applicants in the cadre of Deputy Collectors hinges on the fact

that it was purely a temporary promotion as is mentioned in their orders as 'निव्वळ तात्पुरत्या स्वरूपात पदोन्नती'. This can neither be contradicted, nor have the four Applicants adverted to the contrary. So also, their orders clearly indicate that their temporary promotion was subject to the approval of the MPSC. There is no controversy that no such approval was given by the MPSC as there was no consultation between the DPC and the MPSC. It was also set out that their temporary promotion would not create any equities or rights in their favour and that would not improve their seniority or salary structuring (see paragraph No.8 of this judgment). Be that as it may, the State made a statement before the Tribunal that, no matter what may be the irregularities in the ad-hoc promotions of the PDCs, none would now be reverted. A statement made on behalf of the State Government, is found in it's affidavit in reply dated 01.02.2022, filed by Mr.Madhav Veer, that none of the Applicants or the Respondents before the Tribunal would be reverted. We have every reason to be circumspect as to how would the State cope up with the huge mess created by innumerable ad-hoc promotions made over the past 30 years. Nevertheless, the assurance of the State that none would be reverted, has dispelled the apprehension of the 4

Applicants.

90. It cannot be lost sight of, that, if the challenge posed by these four Applicants is held to be devoid of merits, their petitions (Transfer Applications) will have to be dismissed. If their claim is rejected by this Court, the further issues as regards the legality and validity of the seniority order dated 31.12.2020, need not be subjected to any further scrutiny.

91. In ***Ajinkya Natha Padwal (supra)***, the Bombay High Court left it open to the State Government to take an independent decision whether to make promotions on ad-hoc basis pending finalization of the seniority list. It is undisputed that several ad-hoc promotions have been effected by the State Government in the last four decades. The temporary promotion orders issued to these four Applicants, was under a caveat of the approval of the competent authority, keeping in view the language used 'सक्षम प्राधिकरणाच्या मान्यतेने तदर्थ पदोन्नत्या देण्यात येत आहेत'. It is also undisputed that the first ad-hoc promotion of these four Applicants from the Tahasildar to Deputy Collector on 09.07.1999, was de-hors the requirement of consultation and

approval by the competent authority.

92. Under sub-rule (2) of Rule 9 of the 1977 Rules, the Committee that was constituted by the State with the intent and purpose of formalizing the select list of Tahasildars so as to be promoted as Deputy Collectors, was to meet in the month of September of 1999 and not there before. However, a meeting of the DPC was held on 15.04.1999 and the select list was prepared, de-hors Rule 9(2). The DPC, by holding a meeting on 15.04.1999, apparently overlooked possible candidates who could have been considered if the meeting was held in September, 1999, under Rule 9(2). The promotion orders were issued on 09.07.1999. Both the learned Members of the Tribunal have concluded that there is a deviation from the Recruitment Rules. The distinction, however, is that the learned Member (Judicial) treated such deviation as a minor contravention/ irregularity, whereas, the other learned Member (Administrative) has concluded that the Applicants were not eligible for inclusion in the final combined seniority list prepared as per Rule 8(4), so as to be placed for consideration of the DPC, for promoting them to the cadre of Deputy Collectors.

93. Considering the submissions of the four original Applicants, coupled with the submissions of the other non-Applicants and the Petitioners before us and taking into account the undisputed fact situation emerging from the record and the 1977 Rules, it cannot be contradicted that the ad-hoc promotion of the four Applicants (viz. Shivaji T. Shinde appointed as a Tahasildar on 12.07.1995 and promoted on ad-hoc basis as Deputy Collector on 30.08.2001, Sunil V. Yadav appointed as a Tahasildar on 08.08.1995 and promoted on ad-hoc basis as Deputy Collector on 30.08.2001, Samiksha R. Chandrakar appointed as a Tahasildar on 24.02.1994 and promoted on ad-hoc basis as Deputy Collector on 08.07.1999 and Pandurang R. Kulkarni appointed as a Tahasildar on 31.05.1994 and promoted on ad-hoc basis as Deputy Collector on 08.07.1999), was de-hors the Rules.

94. It cannot be ignored that 75 days time is required to prepare the final combined seniority list. These Applicants were appointed as ad-hoc PDC in the hurriedly convened DPC on 15.04.1999, which is in contravention of the Rules. As such,

since the final selection list was not formalized in compliance with the Rules while preparing the select list, these four Applicants cannot be said to have been appointed as PDC in deference to the Rules applicable.

95. In this legal and factual backdrop, though the four Applicants may be aggrieved because of being pushed down by the impugned seniority list dated 31.12.2020, thereby giving them a cause to approach the Tribunal, the fact remains that their grievance is misconceived and unsustainable. Had it been the case that the placement of these 4 Applicants in the seniority list of the cadre of Dy. Collectors had some bearing on the ad-hoc promotion already granted to them, it could have been said that the cause of action was surviving for them to prosecute the 2 applications. Now, the Applicants have also crossed that hurdle and have already entered into the cadre of Additional Collector. As assured by the Government, they are not to be reverted.

96. It cannot be contradicted that, on the one hand, the State found it convenient to resort to ad-hoc promotions, perhaps out of necessity, and on the other hand, the State had no reason to

act in undue haste and prepare the select list, not in ignorance, but by overlooking and ignoring the 1977 Rules. Even otherwise, these four Applicants were only engaged as ad-hoc PDC (temporary promotion as Promotee Deputy Collectors) as a stop-gap arrangement, which does not justify the contention that they should be treated as validly promoted Deputy Collectors. Admittedly, since a select list as prescribed by sub-rule (7) of Rule 9 was prepared, apparently without consultation with the MPSC, these four Applicants could not have been in the final select list. This defeats the claim of these four Applicants to be treated as being regularly promoted Deputy Collectors w.e.f. 30.08.2001 (first two Applicants) and 08.07.1999 (other two Applicants) in view of proviso (i) below Rule 10(1) of the 1977 Rules.

97. It is evident that there was no consultation of the State with the MPSC, while including these four Applicants in the select list, before determining the final select list of the Tahsildars under sub-rule 7 of Rule 9. So also, no review of their services was carried out as per Rule 12 of the 1977 Rules.

98. The proviso (i) and (ii), to Rule 10(1) of the Rules of 1977, provide for filling up the vacancies in the cadre of Deputy Collectors purely as a stop-gap arrangement. However, proviso (i) indicates that only an officer in the cadre of Tahasildar whose name has been included in the combined final seniority list prepared under Rule 8(4), could be appointed as a Deputy Collector on a stop-gap basis. The Applicants were not eligible for appointment even on stop-gap basis on the post of Deputy Collector under proviso (i) of Rule 10.

99. On the one hand, though the Rules mandate that the Applicants deserve to be reverted back to the cadre of Tahasildar, this would amount to turning the clock back by more than 2 decades, which may lead to multiple administrative complications. On the other hand, accepting the claim of the Applicants to grant them seniority w.e.f. their date of joining the cadre of Deputy Collectors, would amount to injustice to the DDC. Regularization of the PDC in the combined seniority list seems to be the only plausible way out which has been

apparently accepted by most of the PDC, except these four Applicants.

100. In a recently delivered judgment by the Honourable Supreme Court (Coram : Dr.Dhananjaya Y. Chandrachud, Vikram Nath and B.V. Nagarathna, JJJ) in ***Malook Singh and others vs. State of Punjab and others (supra)***, a reference was made by the Honourable Court to the judgment delivered by the Court in ***Direct Recruit Class II Engineering Officers' Association vs. State of Maharashtra, (1990) 2 SCC 715***, and more particularly paragraph Nos.13 and 47, reproduced in this judgment in paragraph No.19 herein above. It was, thus, concluded in ***Malook Singh (supra)***, that when the initial appointment is only ad-hoc and not according to the Rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account considering the seniority.

101. In ***Union of India and another vs. Professor S.K. Sharma, AIR 1992 SC 1188***, the Honourable Supreme Court concluded that the seniority of an appointee is to be reckoned from the date of his regular appointment and not from the day he

officiated on ad-hoc/ officiating basis.

102. The names of these four Applicants had not been included in the select list of Tahsildars, if any, as per Rule 9(3)(iii), since their names did not appear in the final combined seniority list of Tahsildars which has to be prepared under Rule 8(4). Nevertheless, now that they have become Additional Collectors and with the assurance from the State that they will not be reverted, the impugned seniority list, hardly dents their career chances. Therefore, it can be concluded that the four Applicants cannot be said to be aggrieved in order to have a cause to question the impugned seniority list. When the seniority of these Applicants, was not likely to be adversely affected because of any change in their position in the impugned seniority list of Deputy Collectors, in fact, no cause of action would survive for the said applicants to pray for setting aside the impugned seniority list.

103. Three judgments of the Supreme Court, viz. (i) ***Union of India and another vs. Prof. S.K. Sharma, AIR 1992 SC 1188***, (ii) ***Excise Commissioner, Karnataka and another***

vs. V. Sreekanta, AIR 1993 SC 1564 and (iii) ***P.K. Singh vs. Bool Chand Chablani and others, AIR 1999 SC 1478***, clearly lay down the law that the *'services rendered on adhoc basis cannot be considered for the purpose of reckoning seniority'*.

104. The Tribunal has unanimously concluded that the four Applicants did not have any *locus-standi* to challenge the impugned final list dated 31.12.2020 and the final seniority list dated 03.03.2018. These four Applicants were in excess of the quota and, therefore, they would be eligible for regularization from the dates a permanent vacancy arose within their quota. Until then, they would continue to be adhoc appointees and the day they are absorbed on a permanent vacant post in the cadre, that would be the day of their entering the Deputy Collector's quota.

105. The officers who are awaiting their promotion to the post of Dy. Collector Selection Grade, are working on the post PDC for more than 17-18 years. As such, we do not apprehend that the chances of their promotion to the post of Selection Grade Dy. Collector, could be affected. Once these officers are

promoted to the post of Dy. Collector Selection Grade, the criteria would be 'merit' and not 'seniority', for their further promotion to the post of Additional Collector.

106. In ***M.S.L. Patil, Asstt. Conservator of Forests, Solapur (Maharashtra) and others vs. State of Maharashtra and others, (1996) 11 SCC 361***, it is observed that even if many years have passed in the PDC cadre, if there is no review, the result of returning back as Tahsildar, has to follow. However, this would have disastrous effects on every PDC and DDC. Noticing this impact, the State Government declared before the Tribunal that none of the these officers would be reverted, which includes the 4 Applicants before the Tribunal.

107. The direction issued by the Tribunal to prepare a fresh seniority list from 2004, was nobody's prayer before the Tribunal. So also, this would surely impact those PDCs/DDCs, who were not before the Tribunal. Moreover, when the Tribunal has held that the four Applicants did not have the *'locus standi'* and had no cause of action, it could not have granted any relief indirectly to the Applicants, which they could not have been

granted directly.

108. The effect of the irregularities in the ad-hoc promotions of the 4 Applicants is writ large. The Tribunal has dealt with the factors indicating the irregularities in details. We have, as well, adverted to the same as we recorded the contentions of the learned Advocates, elaborately. While exercising Supervisory jurisdiction and not Appellate jurisdiction, we cannot interfere in a judgment only because a different view is possible, and more so when a plausible view has been taken.

109. In the backdrop of this settled position of law, we have considered the views expressed by the two learned Members of the Tribunal. Much ado has been made by the litigating parties before us, contending that two divergent views have been expressed by the two learned Members. We do not entirely agree with this submission. Both the learned Members have expressed their findings in different ways. Finally, the learned Member (Administrative) has handed down a concurring judgment.

110. We agree with the view taken by the Tribunal that the very transition of these 4 Applicants, from Tahsildars to promotee deputy Collectors, is an irregularity. The seniority list dated 31.12.1998, has attained finality and there has been no challenge to the same. The circular dated 29.06.2010 is a testimony of the said seniority list being crystallized. This has also been reiterated in the impugned seniority list vide paragraph Nos.7.1 and 7.2. Paragraph Nos.11 and 20 of the affidavit in reply of the State Government before the Tribunal, crystallized the said issue. In the light of the same, the impugned final seniority has been settled. The grievance of these 4 Applicants is, therefore, baseless and does not deserve consideration. Except these 4, all other PDCs have accepted the impugned seniority list.

111. We need to consider another angle, as to whether the Tribunal could have made suggestions and issued directions, when it had come to a conclusion that both the Applications deserved to the rejected. Once the Tribunal came to a conclusion that the grievance of the 4 Applicants is unsustainable, it should not have travelled any further as their Applications deserved no

consideration. Therefore, issuing guidelines and suggestions, was unwarranted, more so, when all those who would be affected by such suggestions or directions, were not before the Tribunal.

112. Consequentially, when the challenge posed by the four Applicants had been rejected, the Tribunal could not have travelled beyond their prayers. Since we have concluded that both the Transfer Applications of these four Applicants deserve to be rejected, the suggestions put forth by the Tribunal below paragraph No.87 and the consequential order below paragraph No.88, deserve to be quashed. There was no reason, in our view, for the learned Tribunal to make suggestions when the impugned seniority list was not to be interfered with or set aside.

113. The law is clearly laid down in ***Kusum Ingots and Alloys Limited vs. Union of India and another, 2004 (6) SCC 254***, ***Jotun India Private Limited vs. Union of India and others, 2018 SCC Online Bombay 6400*** and ***United Forum and others vs. The Union of India and others, 2018 SCC Online Bombay 2221***, that the Court should decide an issue if there is a cause of action and should refrain from taking up an

issue which is purely academic in nature.

114. In view of our conclusions in this judgment and as both the Transfer Applications fail, we have no reason to deal with the other contentions made by the private parties/ Petitioners before us. The grievance of these four Applicants as against the impugned seniority list dated 31.12.2020, is unsustainable. Both the Transfer Applications, on this ground, deserve to be dismissed.

115. **Writ Petition Nos.11692/2022 and 11762/2022, filed by the State, are allowed. Accordingly, the two Transfer Applications stand dismissed.** Consequentially, the suggestions/ directions issued by the learned Tribunal in paragraph Nos.87 and 88, are quashed and set aside. **Rule is made absolute in these two petitions.**

116. In view of the above analysis and our conclusions, Writ Petition No.12699/2022, filed by Mr. Nitin Mahajan v/s State of Maharashtra and others, does not deserve consideration. Moreover, with our conclusions recorded above, no purpose

would be served in entertaining this Petition. Therefore, **Writ Petition No.12699/2022, stands disposed off**. **Rule is discharged in this petition**.

117. In view of the above, **Writ Petition No.9163/2022** (filed by Samiksha Ramakant Chandrakar and another), **Writ Petition No.9631/2022** (filed by Vijaysingh Shankarrao Deshmukh), **Writ Petition No.9632/2022** (filed by Tushar Eknath Thombre), and **Writ Petition No.12675/2022** (filed by K. K. Suryakrishnamurty), **are dismissed**. **Rule is discharged in these four petitions**.

118. After this judgment was pronounced, the learned Senior Advocate Shri Rajadhyaksha, representing the Petitioner in Writ Petition No.12699/2022, Shri Ajay S. Deshpande, the learned Advocate representing the Petitioners in Writ Petition No.9163/2022 and Shri Avinash S. Deshmukh, the learned Advocate, representing Respondent Nos.3 and 4 in Writ Petition No.9632/2022 and Respondent Nos.1 and 2 in Writ Petition No.11692/2022, prayed for staying the operation of this judgment.

119. The learned Senior Advocate Shri R.S. Apte, representing the State of Maharashtra as a Special Counsel along with the learned Senior Advocate Shri P.R. Katneshwarkar and the learned Senior Advocate Shri V.D. Sapkal, submit that the Original Applications (Transfer Application Nos.1/2021 and 2/2021), were dismissed by the learned Maharashtra Administrative Tribunal vide the impugned judgment dated 26.08.2022. There has been no protective order passed by the learned Tribunal thereafter. When the parties reached this Court in these petitions, there was no interim order operating. At the same time, the judgment of the learned Tribunal impugned in these petitions, was also not stayed.

120. The learned Senior Advocate Shri Rajadhyaksha and the learned Advocate Shri Deshpande, raised a question as to why did the State not issue any orders of promotion when there were no prohibitory orders from this Court. In our view, this question cannot be posed to the Court. It is between the parties and the State. This Court had never passed any order in the nature of either staying the judgment of the Tribunal or

injuncting the State Government from issuing promotion orders.

121. In fact, the learned Senior Advocate Shri Apte had suggested before this Court on 31.01.2024 that any further development that may take place with regard to the promotions of eligible candidates, can be made subject to the result of these petitions. In short, neither the judgment of the learned Tribunal dismissing the Original Applications, was kept in abeyance, nor had this Court issued any injunctory order. We have not issued any order or direction to any of the parties before us. We have only upheld the verdict of the Tribunal, which had dismissed the 2 proceedings before it. Hence, no orders.

(Y.G. KHOBRAGADE, J.) **(RAVINDRA V. GHUGE, J.)**

(Kalyan Sangvikar, PS)