

THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

DATED : 22nd September, 2025

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

WP(C) No.34 of 2023

Petitioners : Aakash Gurung and Others

versus

Respondents : State of Sikkim and Others

Application under Article 226 of the Constitution of India

Appearance

Mr. Karma Thinlay, Senior Advocate with Mr. Yashir N. Tamang and Mr. Zamyang N. Bhutia, Advocates for the Petitioners.

Mr. Zangpo Sherpa, Additional Advocate General with Mr. Sujan Sunwar, Assistant Government Advocate for the Respondents No.1 to 3.

Mr. Bhusan Nepal, Advocate for the Respondent No.4.

None present for the Respondents No.5, 6, 7, 10, 17, 21, 22 and 23.

Ms. Gita Bista and Ms. Pratikcha Gurung, Advocates for the Respondents No.8, 9, 11, 12, 14, 18, 19, 24, 25 and 26.

Mr. A. Moulik, Senior Advocate with Mr. Ranjit Prasad, Ms. Laxmi Khawas and Ms. Neha Kumari Gupta, Advocates for the Respondents No.13, 15, 16, 27 and 28.

Mr. Nirmal Thapa, Advocate for the Respondent No.20.

JUDGMENT

Meenakshi Madan Rai, J.

1. The origins of the conflict, in this Petition, stem from a correspondence, dated 14-09-2018 [Annexure P-13], of the Controller of Examinations, Sikkim Public Service Commission (Respondent No.4), addressed to the Commissioner-cum-Secretary of the Department of Personnel, Administrative Reforms and Training (Respondent No.2 herein, DOPART), informing that, the Interview Committee had recommended Acting Assistant Engineers (Civil) [hereinafter, "AAEs (Civil)"] for appointment to the post of Assistant Engineers (Civil) [hereinafter, "AEs (Civil)"] "through direct

recruitment by way of regularisation". In terms of this correspondence, Office Order bearing No.1717/G/DOP, dated 01-10-2018 [Annexure P-10], was issued, which became the source of disgruntlement amongst the Petitioners as instead of their names being at the top of the list of selected AEs (Civil) as expected by them, they were dispersed at various serial numbers of the list, whereas some of the private Respondents' names were placed above them, although the Petitioners were appointed as AAEs (Civil) much earlier in time than the private Respondents, who were thereby junior to them in service. The Petitioners perceive the act of the State-Respondents as illegal, unjust and arbitrary, depriving them of their legitimate rights and the creation of an erroneous *inter se* seniority list.

(i) The Petitioners' narrative is that, the Petitioner No.1, a degree holder, was appointed as Junior Engineer (Civil) [hereinafter, "JEs (Civil)"], vide Office Order dated 15-09-2004 [Annexure P-1 (colly)]. The rest of the Petitioners, also degree holders, were appointed as JEs (Civil) on 05-05-2008 [Annexure P-1 (colly)].

(ii) On 21-05-2011, Notification No.391/GEN/DOP, was issued by Respondent No.2 (DOPART) to fill up the posts of AEs (Civil), by relaxing the method of recruitment and utilising the direct recruitment quota of 50% [Annexure P-2]. This Notification was rescinded on 17-06-2011 vide Notification No.401/GEN/DOP [Annexure R-1].

(iii) Following this circumstance, vide Office Order dated 14-10-2011, the Petitioner No.1 was appointed as AAE (Civil) and vide Office Order dated 04-07-2012, Petitioners No.2, 3, 4, 5, 6 and 7 were also appointed as AAEs (Civil) while vide Office Order dated 17-

09-2012, the Petitioners No.8, 9 and 10, were appointed as AEs (Civil), as their services were deemed essential in the wake of the damage caused by the major earthquake that struck Sikkim in September, 2011 [Annexure P-3 (colly)].

(iv) On 07-09-2012, the Respondent No.4 (SPSC) issued an Advertisement inviting applications for filling up thirty-three posts of AEs (Civil), by open competitive examination [Annexure P-4 (colly)]. The Petitioners submitted a representation to the Hon'ble Chief Minister of the State *inter alia* expressing their reluctance to compete with fresh Graduates by taking written examinations with them as the Petitioners were engaged in important projects for the Government, divesting them of time for preparations. On such representation, the advertisement was abandoned by the State-Respondents.

(v) In the year 2013, Respondent No.2 (DOPART), vide Notification No.80/GEN/DOP, dated 22-01-2013, upgraded thirty-six posts of JEs (Civil), presently held by AEs (Civil), to that of AEs (Civil). The Notification reflected that such upgradation was subject to the recommendation of the Respondent No.4 (SPSC) [Annexure P-5 (colly)]. The Petitioners aver that, their names were amongst the thirty-six AEs (Civil) selected for upgradation to the post of AEs (Civil) and reflected in the relevant list dated 22-01-2013, with the name of the Petitioner No.1 at Sl. No.12 and the other Petitioners from Sl. No.27 to 34 and at Sl. No.36 (Petitioners No.2 to 10) [Annexure P-5 (colly)]. However, only twenty-five candidates were appointed as AEs (Civil), vide Office Order No.1420/G/DOP, dated 21-09-2016 [Annexure P-7], after relaxing the rules and utilising the direct recruitment quota of 50%. The nine Petitioners herein (of whom Petitioner No.10 is since deceased), were informed that, their

non-selection was based on their lack of requisite years of experience, while one Saroj Adhikari, a 2005 appointee, was selected instead of Petitioner No.1, who was a 2004 appointee. The Petitioner No.1 objected to this circumstance, vide letter dated 05-05-2015 addressed to the Respondent No.2 [Annexure P-8], to no avail. The Petitioners aver that, thereafter, they were assured priority in regularisation and seniority, over the rest of the JEs (Civil), by the Respondent No.2 (DOPART). In the interim, it is alleged that the State Respondents continued to create posts of AAEs (Civil) till June, 2017, to handpick their candidates.

(vi) It is further averred that, in 2018, thirty-five posts of AEs (Civil) were notified, vide Notification No.79/GEN/DOP, dated 16-08-2018, for "*regularisation of the services of the AAEs*", by again relaxing the rules and utilising the direct recruitment quota of 50% [Annexure P-9]. An interview was accordingly conducted by the Respondent No.4 (SPSC) on 08-09-2018, which gave rise to the impugned communication dated 14-09-2018 [Annexure P-13] and the impugned Office Order with list, dated 01-10-2018 [Annexure P-10]. Objecting to such arbitrariness, as surmised by the Petitioners in the placement of seniority, they seek the following reliefs;

- (A) *Admit the petition, call for records and issue notice calling upon the Respondents to show cause as to why a writ of mandamus/certiorari and appropriate writ/order or direction may not be issued commanding and directing the State Respondents.*
- (B) *Quash the Office Order No.1717/G/DOP, dated 01-10-2018, that placed the Petitioners and private Respondents in the same inter se seniority list, despite the Petitioners being appointed as Acting Assistant Engineers (Civil) much earlier than the private Respondents.*

- (C) *Quash the letter dated 14-09-2018 sent from Sikkim Public Service Commission to Department of Personnel, Government of Sikkim.*
- (D) *Fix the inter se seniority of the Petitioners above the private Respondents and in the order of their appointment as Acting Assistant Engineers (Civil).*
- (E) *To stay any and all promotions of the private Respondents to the post of the Divisional Engineer (Civil) till the conclusion of the present petition.*
- (F) *To modify the recommendation from the SPSC dated 14-09-2018 to the extent of placing the Petitioners as seniors to the private Respondents in the same order of merit.*
- (G) *Quash the appointment of the private Respondents as Acting Assistant Engineers vide Order dated 04-03-2014, Order dated 01-07-2015, Order dated 07-07-2015 and Order dated 27-06-2017 passed by the Department of Personnel.*
- (H) *To modify the Office Order No.1420/G/DOP dated 21-09-2016 to the extent of placing the Petitioner No.1 in the same Office Order in any order of seniority as the earlier appointee.*
- (I) *Pass any order or direction as the Hon'ble Court may deem fit to grant in the interest of justice, equity and fair conscience.*

2. Records reveal that private Respondents No.5, 6, 7, 10, 17, 21, 22 and 23 failed to enter appearance despite due service of Notice and continued to remain unrepresented even till the date of hearing of final arguments and its conclusion.

3. Affidavits were exchanged, viz; Joint Counter-Affidavit was filed on behalf of the State-Respondents No.1 and 2.

(i) A separate Counter-Affidavit each was filed by the State-Respondent No.3, Roads and Bridges Department, Government of Sikkim and Respondent No.4, Sikkim Public Service Commission.

(ii) Private Respondents No.8, 9, 11, 12, 14, 18, 19, 24, 25, 26 filed their joint Counter-Affidavit, while Private Respondents No.13, 15, 16, 27, 28 also filed their joint Counter-Affidavit.

(iii) Private Respondent No.20 filed a separate Counter-Affidavit.

(iv) By filing Rejoinder to the Counter-Affidavits of the Respondents, the Petitioners reiterated the averments in their Petition and urged that their only prayer is to place them higher in seniority than the private Respondents who were appointed in the year 2018, as they being degree holders have lost their seniority to diploma holders, while other Engineers in the same seniority list were regularised in the year 2016 itself.

4. Learned Senior Counsel for the Petitioners drawing the attention of this Court to the various dates in the Writ Petition and emphasising on the "*Doctrine of Legitimate Expectation*", urged that, injustice was meted out to the Petitioners as they were Graduate Engineers, appointed as JEs (Civil) much ahead in time than the private Respondents. The Petitioners were earlier not considered against the vacancy of thirty-six posts, although the list dated 22-01-2013 bore their names and specified that their posts were upgraded, which was confirmation that the posts held by the Petitioners were deemed to have been upgraded to that of AEs (Civil) and was only awaiting recommendation of the Respondent No.4 (SPSC). This can also be culled out from the fact that, their names had already been removed from the list of JEs (Civil) in the year 2013. Reiterating the averments detailed in the Petition, it was urged that in ***Army Welfare Education Society New Delhi vs. Sunil Kumar Sharma and Others***¹ the

¹ 2024 SCC OnLine SC 1683 (Paragraphs 47 and 48)

Supreme Court laid down that legitimate expectation is a device to maintain a check on State arbitrariness, as in the instant case, where seniority of the Petitioners has been ignored and the private Respondents given preference in such placement. Strength on this count was also drawn from the decision in ***Confederation of Ex-Servicemen Associations and Others vs. Union of India and Others***².

(i) It was urged that vide a communication dated 15-02-2013, the Respondent No.3, issued a Provisional Seniority List of Graduate JEs (Civil) dated 31-01-2013 and sought objections from the Petitioner No.3 [Annexure P-6]. No objection was raised by them as they were probationers at the relevant time and the Sikkim State Engineering (Civil, Electrical & Mechanical) Services Rules, 1989 (hereinafter, "Engineering Service Rules of 1989"), at Rule 23, are harsh and could well have deprived the Petitioners of their employment, hence, the silence, on apprehension of losing their employment.

(ii) It was reiterated by Learned Senior Counsel that, Notification bearing No.79/GEN/DOP, dated 16-08-2018, was issued for recruitment in thirty-five posts of AEs (Civil), by relaxation of the rules, indicating the provision for mandatory written examinations, but instead an interview was conducted by the Respondent No.4 (SPSC), who by the impugned letter dated 14-09-2018, intimated to the Respondent No.2 (DOPART) that, the merit list was based on marks obtained by the candidates in the interview and seniority was arranged in order of merit [Annexure P-13]. To their disappointment, the Petitioners discovered that, they were placed in the same *inter se* seniority list (*supra*), with most of the private Respondents being

² (2006) 8 SCC 399

placed above the Petitioners despite their seniority. The Petitioners were under the impression that post the interview the seniority would only be reshuffled amongst themselves, on account of their initial dates of appointment. That, the seniority of the previous JEs (Civil) regularised on 21-09-2016 had been affected without any change in their seniority list, while a different criteria was applied to the Petitioners, with junior candidates handpicked, under the pretext of arranging the seniority on merit.

(iii) Relying on the ratio in ***Babita Rani vs. Punjabi University, Patiala and Others***³, Learned Senior Counsel contended that, the interview was arbitrarily conducted the criteria for assessment or marks of the interview have not been disclosed to the Petitioners till date. On this facet, Learned Senior Counsel also placed reliance on ***R. Chitralekha and Another vs. State of Mysore and Others***⁴. Persisting on the unfairness of the interview in his submissions, strength was drawn from ***Ajay Hasia and Others etc. vs. Khalid Mujib Sehravardi and Others etc.***⁵ wherein it was held that, oral interview was not satisfactory and should not be relied upon as an exclusive test.

(iv) While bolstering his arguments with strength drawn from ***Ajay Kumar Shukla and Others vs. Arvind Rai and Others***⁶, Learned Senior Counsel raised the contention that, although it is settled law that challenges to seniority in service jurisprudence should be made within three to four years of such grievance, however no bar exists in assailing the seniority if it is found to be *prima facie* illegal or unjust, provided that the delay is explained. Making efforts to explain the delay, it was reiterated that, during the years 2019 and 2020 the

³ 2011 SCC OnLine P&H 15349

⁴ AIR 1964 SC 1823

⁵ AIR 1981 SC 487

⁶ (2022) 12 SCC 579

Petitioners were under the probationary period of service and did not seek to antagonise the Government as already contended (*supra*). Thereafter, the COVID-19 Pandemic in 2020 and 2021 made it difficult for the Petitioners to pursue their legal rights, besides, the Supreme Court has by a judicial order, directed the Courts to condone the delay from 15-03-2020 to 28-02-2022. Numerous representations emphasising the grievances of the Petitioners were also filed before the State Government in the years 2022 and 2023 with no result. Ultimately, the Petitioners issued a legal notice dated 20-07-2023 to the Respondents No.1 to 4, seeking redressal of their grievances [Annexure P-14] again to which no heed was paid. That this Court can mould the relief where it is so warranted, this argument was advanced garnering strength from ***J. Ganapatha and Others*** vs. ***M/s. N. Selvarajalou Chetty Trust Rep. by its Trustees and Others***⁷. The Petitioners having exhausted the alternatives were constrained to file the instant Writ Petition, their fundamental rights enshrined under Articles 14, 19 and 21 of the Constitution of India having been violated for the foregoing detailed reasons. That, the Petitioners being entitled to the reliefs, may be granted the same.

5. Learned Additional Advocate General appearing for the State-Respondents No.1 to 3, repudiated the submissions of Learned Senior Counsel for the Petitioners and canvassed the contention that, reliefs sought at prayer (H) of the Writ Petition seeks modification of the Office Order No.1420/GEN/DOP, dated 21-09-2016 [Annexure P-7] and to place Petitioner No.1 in the same Office Order and order of seniority. The persons listed in the said Office Order have not been made parties to the Writ Petition, on this ground alone the Writ

⁷ 2025 Live Law (SC) 353 : 2025 SCC OnLine SC 633

Petition deserves a dismissal, this submission was fortified by reliance on **Ranjan Kumar and Others vs. State of Bihar and Others**⁸. That, the Petitioners were well aware of the steps being taken by the concerned Department, so far as regularisation and seniority were concerned, which is reflected in the representation of the Petitioner No.1, dated 05-05-2015, addressed to the Respondent No.2 (DOPART) [Annexure P-8]. The Writ Petition was however filed belatedly, only in the year 2023. Notification No.80/GEN/DOP, dated 22-01-2013 [Annexure P-5 (colly)], nowhere envisaged or declared specifically that, the posts of the Petitioners were being upgraded or regularised, by mention of their names. This is an incorrect assumption of the Petitioners. Relying on the decision of **Tajvir Singh Sodhi and Others vs. State of Jammu and Kashmir and Others**⁹ it was contended that the Petitioners having submitted to the interview process without demur, cannot raise objections belatedly now, nor can they claim seniority over candidates who obtained better marks and were placed higher in merit. Reliance was also placed on **Om Prakash Shukla vs. Akhilesh Kumar Shukla and Others**¹⁰ and **Madan Lal and Others vs. State of J&K and Others**¹¹ on this facet. That, the Writ Petition ought to be dismissed on this ground alone.

(i) The next point raised was that, the appointment of the Petitioners in the year 2018 was made by way of relaxation of rules, utilising the direct recruitment quota and selection based on merit. The Petitioners cannot claim seniority merely on having been given charge as AEs (Civil) temporarily, when they were not even born in the cadre of AEs (Civil) and were holding lien to the posts of JEs

⁸ (2014) 16 SCC 187

⁹ (2023) 17 SCC 147

¹⁰ 1986 (Supp) SCC 285

¹¹ (1995) 3 SCC 486

(Civil). Their seniority would therefore be reckoned only from the date of their substantive appointment as AEs (Civil), in the year 2018. That, the Petitioner No.1 was well aware of his seniority from 2013 on issuance of Notification No. No.80/GEN/DOP, dated 22-01-2013 [Annexure P-5 (colly)]. Moreover, issues raised by the Petitioners in the instant Writ Petition have already been decided by this Court in ***Bijay Kumar Pradhan and Others*** vs. ***State of Sikkim and Others***¹². Learned Counsel also clarified and reiterated the stance of the State-Respondents as averred in their Counter-Affidavit in the context of seniority, relaxation of the recruitment rules and the consequent direct recruitment of the Petitioners. The Petition, for the foregoing reasons, deserves a dismissal.

6. Learned Senior Counsel for the Respondents No.13, 15, 16, 27 and 28 while also agreeing with and adopting the submissions advanced by Learned Additional Advocate General, reiterated the facts as detailed in the Counter-Affidavit of the aforementioned Respondents. It was argued that the order of merit suffers from no illegality. The Petitioners cannot now claim seniority on grounds of appointment as "AAEs (Civil)" prior to the Respondents, as the word "Acting" is unknown to the service rules governing the parties and the Petitioners' appointment as AAEs (Civil) confers no right on them to claim confirmation as AEs (Civil) or to claim seniority over the Respondents. The post of AAEs (Civil) is not a promotional post from JEs (Civil), their lien being to the post of JEs (Civil) as evident from their Office Orders of AAEs (Civil) [Annexure P-3 (colly)]. Mere removal of the names of the Petitioners from the list of JEs (Civil) did not suggest confirmation of their promotions. Promotion to the post

¹² 2023 SCC OnLine Sikk 65

of AEs (Civil) from that of JE was based on the recommendation of the Respondent No.4 as seen in Notification No.80/GEN/DOP, dated 22-01-2013 [Annexure P-5 (colly)]. The Petitioners having participated in the interview conducted by Respondent No.4, cannot seek discarding of the order of merit. Seeking to distinguish between promotion and upgradation and urging that the Petitioners were promoted on the recommendation of Respondent No.4 (SPSC), reliance was placed on **B. Thirumal vs. Ananda Sivakumar and Others**¹³. The Petitioners' contention that, assurances were given to them by the Government to prioritise their regularisation and seniority cannot be countenanced, in the absence of documents to bolster this submission. As the Petitioners claimed reliefs against persons appointed in 2016, but they have not been impleaded as parties, including one Saroj Adhikari, hence this Petition is not maintainable. The Petitioners having knowingly participated in the interview, they cannot raise an objection after more than five years of the appointments and having joined their respective postings. This submission was fortified by the observation of this Court in **Tseten Plazor Bhutia vs. State of Sikkim and Others**¹⁴ which held that the law leans in favour of the alert and on **K. R. Mudgal and Others vs. R. P. Singh and Others**¹⁵ to substantiate the argument that seniority list which remains in existence unchallenged for three to four years should not be disturbed. It was also pointed out that the Supreme Court in **M/s. Tilokchand Motichand and Others vs. H. B. Munshi and Another**¹⁶ observed that delay will hold the party disentitled to invoke the extraordinary jurisdiction. Strength was also drawn from

¹³ (2014) 16 SCC 593

¹⁴ 2022 SCC OnLine Sikk 67

¹⁵ (1986) 4 SCC 531

¹⁶ (1969) 1 SCC 110

Rabindranath Bose and Others vs. The Union of India and Others¹⁷, where it was exposted that appointment and promotion which was effected a long time ago would not be set aside after a lapse of a number of years. Similarly in **P. S. Sadasivaswamy vs. State of Tamil Nadu**¹⁸ the Supreme Court observed that, a person aggrieved by an order of promotion of a junior over his head, should approach the Court at least within six months or a year of such promotion and not after a lapse of fourteen years. It was next contended that this Court has already dealt with *inter se* seniority and merit list involving the Petitioners in **Bijay Kumar Pradhan (supra)** and the matter given a quietus therein. That, delay and laches ails the Writ Petition and directions of the Supreme Court pertaining to extension of limitation in Suo Motu Writ Petition (C) No.03 of 2020 relied on by the Petitioners is inapplicable to their case, the cause of action herein having arisen prior in time to the said orders, hence no benefit thereto accrues to them.

7. Learned Counsel for the Respondents No.8, 9, 11, 12, 14, 18, 19, 24, 25 and 26, while endorsing the submissions advanced by the Learned Additional Advocate General and Learned Senior Counsel for the Respondents No.13, 15, 16, 27 and 28, added that, when the names of only twenty-five candidates were incorporated and appointments made on 21-09-2016 as reflected in the Judgment of **Bijay Kumar Pradhan (supra)**, the Petitioners although evidently aggrieved with their non-appointment opted not to raise objections. Individuals selected and appointed vide the Order dated 21-09-2016 are not parties to the present proceedings, thereby rendering the Writ Petition as not maintainable. The Petitioners have also not impugned

¹⁷ (1970) 1 SCC 84

¹⁸ (1975) 1 SCC 152

the Notification dated 16-08-2018 [Annexure P-9] in the present proceedings, when it forms the very foundation of the selection process as it relaxes the rules of direct recruitment. The Memorandum of appointment was served upon the Petitioners and the private Respondents on 14-09-2018, which was accepted by all without protest, although there was no bar to any candidate from assailing the legality of the appointments. The sole grievance of the Petitioners seeking placement above the private Respondents is untenable, the Petitioners having participated in the viva-voce, the appointments made on merit and the objections raised rather belatedly. Hence, the Petition deserves to be dismissed. Learned Counsel buttressed her submission with reliance on the same Judgments cited by Learned Senior Counsel for the Respondents No.13, 15, 16, 27 and 28.

8. Learned Counsel for the Respondent No.20 endorsed the submissions made by the preceding Counsel for other Respondents.

9. Due consideration has been afforded to the rival contentions advanced by Learned Counsel for the parties. I have also carefully perused all averments and documents relied upon and the citations made at the Bar.

10. The questions that fall for consideration of this Court are;

- (i) Whether the Doctrine of Legitimate Expectation is applicable to the facts and circumstances of the Petitioners' case?
- (ii) Whether the services of the Petitioners, by the impugned Order, fall within the ambit of upgradation, promotion or direct recruitment?
- (iii) Whether the Writ Petition has been filed belatedly and is hit by the Doctrine of Delay and Laches?

- (iv) Whether the reliefs sought for by the Petitioners can be moulded?
- (v) Whether the Petitioners can challenge the process of examination having appeared in it?
- (vi) Whether the Writ Petition was defective for non-impleadment of necessary parties?

11. While determining Question no.1 hereinabove, on doctrine of legitimate expectation, it is relevant to notice that the Doctrine of Legitimate Expectation has its genesis in the English Law, which extended judicial review in administrative actions, to protect procedural and substantive interest, when a public authority rescinds from a representation made to a person. It has its foundation on the principles of natural justice and fairness and seeks to prevent authorities from abusing powers. In *Sivanandan C. T. and Others vs. High Court of Kerala and Others*¹⁹ the Supreme Court went on to explain the principle as follows;

"18. The basis of the doctrine of legitimate expectation in public law is founded on the principles of fairness and non-arbitrariness in Government dealings with individuals. It recognises that a public authority's promise or past conduct will give rise to a legitimate expectation. The doctrine is premised on the notion that public authorities, while performing their public duties, ought to honour their promises or past practices. The legitimacy of an expectation can be inferred if it is rooted in law, custom, or established procedure.
[*Salemi v. MacKeller (No. 2)*, 1977 HCA 26 : (1977) 137 CLR 396]

24. By the 1990s, the Indian courts incorporated the doctrine of legitimate expectation in the context of procedural fairness and non-arbitrariness under Article 14 of the Constitution. In *Food Corpn. of India v. Kamdhenu Cattle Feed Industries* [(1993) 1 SCC 71], **this Court held that public authorities have a duty to use their powers for the purposes of public good. This duty raises a legitimate expectation on the part of the citizens to be treated in a fair and non-arbitrary manner in their interactions with the State and its instrumentalities.** This Court held that a decision taken by an executive authority without considering the legitimate expectation of an affected person may amount to an abuse of power: (SCC p. 76, para 7)

¹⁹ (2024) 3 SCC 799

"7. ... To satisfy this requirement of non-arbitrariness in a State action, it is, therefore, necessary to consider and give due weight to the reasonable or legitimate expectations of the persons likely to be affected by the decision or else that unfairness in the exercise of the power may amount to an abuse or excess of power apart from affecting the bona fides of the decision in a given case. The decision so made would be exposed to challenge on the ground of arbitrariness. Rule of law does not completely eliminate discretion in the exercise of power, as it is unrealistic, but provides for control of its exercise by judicial review."

The Court held that whether the expectation of a claimant is legitimate or not is a question of fact which has to be decided after weighing the claimant's expectation against the larger public interest. Thus, while dealing with the claims of legitimate expectations, the court has to necessarily balance the legitimate expectation of a claimant against the larger public interest." [emphasis supplied]

The doctrine of legitimate expectation has thus been soundly elucidated hereinabove.

(i) In *Jitendra Kumar and Others* vs. *State of Haryana and Another*²⁰ it was observed that the doctrine is grounded in the rule of law as requiring regularity, predictability and certainty in the Government's dealings with the public. It was observed that while differentiating between legitimate expectation on the one hand and anticipation, wishes and desire on the other, legitimate expectation is not the same thing as an anticipation. It is distinct and different from desire and hope. In *Army Welfare Education Society* (*supra*) the Supreme Court elucidated exhaustively the doctrine of legitimate expectation and propounded that it was jurisprudentially a device created in order to maintain a check on arbitrariness in state action. In *Confederation of Ex-Servicemen Associations* (*supra*) it was held as follows;

"35. In such cases, therefore, the Court may not insist an administrative authority to act *judicially* but may still insist it to act *fairly*. The doctrine is based on the principle that good administration demands observance of reasonableness and where it has adopted

²⁰ (2008) 2 SCC 161

a particular practice for a long time even in the absence of a provision of law, it should adhere to such practice without depriving its citizens of the benefit enjoyed or privilege exercised.” [emphasis supplied]

(ii) On 22-01-2013, Notification No.80/GEN/DOP, was issued by Respondent No.2 for upgradation of thirty-six posts of JEs (Civil). These upgraded posts, were to be filled up through promotion on the recommendation of the Respondent No.4. This Notification does not refer to the Petitioners by name. It is no more *res integra* that any Statute, Order, etc., is to be read and understood as it appears without reading any specific interpretation or desired interpretation into them. Thus, the argument that the upgraded posts were specifically for those persons mentioned in the list of thirty-six degree holder JEs (Civil) cannot be countenanced, besides as required by the Notification, Respondent No.4 had not yet recommended their names to the said upgraded posts.

(iii) Consequently it emerges that, the Petitioners have failed to establish as to how they had legitimate expectation or how the State-Respondents rescinded from a representation made to them. The act of the State-Respondents in the previous selection and appointment of twenty-five Engineers, was by way of relaxation of the recruitment rules and utilisation of the direct recruitment quota of 50%. The selection of AEs (Civil) was then made by an interview, similar to the process of appointment adopted for the Petitioners. Mere removal of their names from list of JEs (Civil) cannot be said to be the foundation for legitimate expectation as the order of AEs unequivocally mentions that their lien shall be to the post of JEs. The conduct of the State-Respondents towards aspirants in 2016 and in 2018 has been consistent. Besides, the Petitioners cannot interpret the Notification No.80/GEN/DOP, dated 22-01-2013 [Annexure P-5

(colly)], to suit their interest as it is mentioned in no uncertain terms that the promotions would be based on the recommendation of Respondent No.4 (SPSC). No promises with regard to seniority have been held out by the State-Respondents to the Petitioners by the said Notification nor has any document been furnished in this context. The wishes and desires of the Petitioners cannot translate to legitimate expectation in the absence of any express or implied promise made by the State-Respondents to them more especially when it is sans inconsistencies with previous modes of recruitment. The appointments with which the Petitioners are aggrieved, having gone unchallenged cannot be assailed now. Hence, the invocation of the doctrine by the Petitioners lends no fortification to their case and is thereby inapplicable.

12. While discussing Question no.2; "Whether the services of the Petitioners, by the impugned Order, fall within the ambit of upgradation, promotion or direct recruitment?", the Supreme Court in ***Union of India and Others vs. S. D. Gupta and Others***²¹ observed that the object of direct recruitment is to blend talent and experience to augment efficiency when direct recruits, though came from green pastures, were imbued with dedication and honesty. It was also explained that the recruitment by direct mode is to substantive vacancies though their initial appointment is temporary and on completion of period of probation they become substantive appointees.

(i) In this thread, it would be worthwhile to notice that in ***Bharat Sanchar Nigam Limited vs. R. Santhakumari Velusamy and Others***²²

²¹ (1996) 8 SCC 14

²² (2011) 9 SCC 510

the Supreme Court distinguished between promotion and upgradation and held as follows;

"29. On a careful analysis of the principles relating to **promotion** and **upgradation** in the light of the aforesaid decisions, the following principles emerge:

(i) **Promotion is an advancement in rank or grade or both and is a step towards advancement to a higher position, grade or honour and dignity.** Though in the traditional sense promotion refers to advancement to a higher post, in its wider sense, promotion may include an advancement to a higher pay scale without moving to a different post. But the mere fact that both—that is, advancement to a higher position and advancement to a higher pay scale—are described by the common term "promotion", does not mean that they are the same. The two types of promotion are distinct and have different connotations and consequences.

(ii) **Upgradation merely confers a financial benefit by raising the scale of pay of the post without there being movement from a lower position to a higher position.** In an upgradation, the candidate continues to hold the same post without any change in the duties and responsibilities but merely gets a higher pay scale.

(iii) Therefore, when there is an advancement to a higher pay scale without change of post, it may be referred to as upgradation or promotion to a higher pay scale. But there is still difference between the two. **Where the advancement to a higher pay scale without change of post is available to everyone who satisfies the eligibility conditions, without undergoing any process of selection, it will be upgradation. But if the advancement to a higher pay scale without change of post is as a result of some process which has elements of selection, then it will be a promotion to a higher pay scale.** In other words, upgradation by application of a process of selection, as contrasted from an upgradation simpliciter can be said to be a promotion in its wider sense, that is, advancement to a higher pay scale.

(iv) Generally, upgradation relates to and applies to all positions in a category, who have completed a minimum period of service. Upgradation can also be restricted to a percentage of posts in a cadre with reference to seniority (instead of being made available to all employees in the category) and it will still be an upgradation simpliciter. **But if there is a process of selection or consideration of comparative merit or suitability for granting the upgradation or benefit of advancement to a higher pay scale, it will be a promotion.** A mere screening to eliminate such employees whose service records

may contain adverse entries or who might have suffered punishment, may not amount to a process of selection leading to promotion and the elimination may still be a part of the process of upgradation simpliciter. Where the upgradation involves a process of selection criteria similar to those applicable to promotion, then it will, in effect, be a promotion, though termed as upgradation.

.....” [emphasis supplied]

(ii) On the bedrock of this pronouncement, it is apparent that the Petitioners cannot be said to be ‘upgraded’ as there was a selection process. The fact that, there was relaxation of the direct recruitment rules and the quota of direct recruitment of 50% of AEs (Civil) was to be filled by JEs, is reflective of the fact that the Petitioners were promoted to the post of AEs. Hence, the argument of the Learned Additional Advocate General that their appointments were direct recruitment cannot sustain, as rules pertaining to appointments for direct recruitment were relaxed and such quota was used for promotion of the Petitioners who were already in service, having been appointed as JEs initially.

(iii) The Petitioners have harped on their seniority and deprivation of their rights thereto by the State-Respondents by placing the private Respondents above them. As can be seen from ***Bharat Sanchar Nigam Limited*** (*supra*) the advancement to a higher pay scale with a process of selection it will be a promotion. The selection is based on merit. The law regarding seniority is no more *res integra* and on this facet we may carefully refer to the following decisions;

(a) In ***Ajay Kumar Shukla*** (*supra*), the Supreme Court therein was dealing with the case of Junior Engineers in the Department of Minor Irrigation, State of Uttar Pradesh (Irrigation Department), who were aggrieved by the final seniority list dated 05-03-2010 and challenged the same in the High Court. In the said matter, after

selection of the Junior Engineers in the posts of Agricultural Engineering, Mechanical Engineering and Civil Engineering, the three separate lists of selected candidates were forwarded by the U.P. Public Service Commission to the Irrigation Department. The selected list of candidates for Agricultural Engineering was forwarded on 28-09-1999, for Mechanical Engineering on 06-01-2000 and for Civil Engineering on 07-11-2000. Based on the three selection lists, appointment letters were issued on 08-10-2001. On 17-03-2006, a tentative seniority list was published, followed by a final seniority list on 05-09-2006. The Office Order *inter alia* reflected that, the seniority of the selected candidates had been kept in order of merit. In 2009, a fresh seniority list was prepared. On 29-12-2009, objections were invited to the provisional seniority list, which were accordingly received. On 05-03-2010, a final seniority list was published. It came to light that the mode of preparation of the seniority list was as hereunder; if there were thirty candidates in the agricultural stream, all those candidates were placed from Sl. No.1 to 30, in the order as it was received. If 20 candidates were in the Mechanical List, they were placed *en bloc* in the following serial numbers as received from the Commission, i.e., from Sl. No.31 to 50 and if there were 50 in the Civil stream they were placed below the Mechanical List with Sl. No.51 to 100 in the same sequence as forwarded by the Commission. It is this *en bloc* placement of seniority without consideration of merit that was challenged. The facts in the instant case are distinguishable as it is no one's case that the Petitioners were placed *en bloc* below the private Respondents, without consideration of individual marks and merit. It is not denied that Respondent No.4 (SPSC) conducted an interview to assess the

merit of the candidates, upon which, the list was prepared and the Petitioners have been interspersed with the private Respondents in terms of seniority, based on merit.

(b) In ***State of Tamil Nadu and Another vs. E. Paripoornam and Others***²³ it was laid down that, when temporary appointments in public interest are made by the Government owing to an emergency, **once they are appointed in accordance with the rules they are not entitled to count their temporary service for seniority.** The Supreme Court observed that;

"14. Apart from that, Rule 10(a)(i)(1) provides for making of temporary appointments when it is necessary in the public interest to do so owing to an emergency which has arisen for filling a vacancy immediately. Such appointments are made otherwise than in accordance with the procedure prescribed under the Rules. **In the instant case the respondents were appointed temporarily and otherwise than in accordance with the Rules. They were later selected along with others for direct recruitment by the Public Service Commission. They were not entitled to count their temporary service for seniority.** In *A.P.M. Mayankutty v. Secretary, Public Service Department* [(1977) 2 SCC 360] this Court observed that the services rendered by the applicants under Rule 10(a)(i)(1) cannot be considered for the purpose of seniority as such appointment is a matter of stop-gap, emergency or fortuitous arrangement. The present case cannot be an exception to this principle even though their temporary services have been regularised, since regularisation was only for limited purposes." [emphasis supplied]

(iv) Similarly, although the same rules *supra* cited in the Judgment (*supra*) do not apply to the instant matter, it is the principles enunciated therein that are being culled out for consideration. The Petitioners' promotion being based on the Engineering Service Rules of 1989 and relaxation of the rules of direct recruitment, they cannot base their seniority on the circumstances of having been appointed as AAEs (Civil) temporarily, as their lien to the post of JEs (Civil) is categorical and expressed in their order of appointment as AAEs (Civil). They were appointed in place of direct

²³ 1992 Supp (1) SCC 420

recruitees on the basis of an interview. Their seniority is unequivocally dependent on the assessment of the interview conducted by the Committee constituted by Respondent No.4 (SPSC) as clearly mentioned in Notification No.80/GEN/DOP, dated 22-01-2013 [Annexure P-5 (colly)]. In view of the foregoing discussions, Question No.2 stands determined accordingly.

13. Now, addressing Question No.3 – Whether the Writ Petition has been filed belatedly and is hit by the doctrine of Delay and Laches? It is imperative to realise that the doctrine of laches is based upon equitable consideration but imports passivity as well. It is a flexible doctrine being dependent upon the specific facts and circumstances of each case, unlike the Statute of limitations which imposes strict deadlines. While approaching the Court with a belated Petition, the reasons furnished for such delay must satisfy the Court, as it is settled law that the Court will not help those who sleep over their rights. It thus concludes that *vigilantibus non dormientibus aequitas subvenit*, in other words equity aids the vigilant and not those who sleep over their rights. “Laches” derived from the French language meaning “remissness and slackness” involves unreasonable delay. Acquiescence would mean a tacit or passive acceptance [See ***Union of India and Others vs. N. Murugesan and Others***²⁴]. The conduct of the Petitioners points to delay, laches and acquiescence. The Petitioners urged that the delay was on account of the period of probation immediately on appointment and the severity of Rule 23 of the Engineering Service Rules of 1989. The intervening COVID-19 Pandemic was another ground. It was urged that the Supreme Court

²⁴ (2022) 2 SCC 25

correctly taking cognizance of the Pandemic issued guidelines for extension of limitation in Suo Motu Writ Petition (C) No.03 of 2020.

(i) While examining Rule 23 of the Engineering Service Rules of 1989 it provides *inter alia* for discharge of a probationer from service if he is found lacking in qualities of mind and character needed for the Service or in the constructive outlook and human sympathy needed in the public services generally.

(ii) While emphasising with the circumstance of the Petitioners and their apprehension for being dismissed from service, this Court cannot overlook the requirement of law which mandates immediate steps by aggrieved persons for redressal of their grievances by a Court of law. On this count in ***K. R. Mudgal (supra)***, validity of appointment was raised after more than thirty-two years. The Supreme Court was of the view as extracted below;

"9. We may also refer here to the weighty observations made by a Constitution Bench of this Court in *Malcom Lawrence Cecil D'Souza v. Union of India* [(1976) 1 SCC 599] at pp. 413-14 of the Reports which are as follows: (SCC p. 602, para 9)

Although security of service cannot be used as a shield against administrative action for lapses of a public servant, by and large one of the essential requirements of contentment and efficiency in public services is a feeling of security. **It is difficult no doubt to guarantee such security in all its varied aspects, it should at least be possible to ensure that matters like one's position in the seniority list after having been settled for once should not be liable to be reopened after lapse of many years at the instance of a party who has during the intervening period chosen to keep quiet. Raking up old matters like seniority after a long time is likely to result in administrative complications and difficulties. It would, therefore, appear to be in the interest of smoothness and efficiency of service that such matters should be given a quietus after lapse of some time."** [emphasis supplied]

(iii) In ***Tseten Plazor Bhutia (supra)*** this Court had observed that the *inter se* seniority was settled on 02-08-2016, the Petitioner's representation voicing his grievance was filed on 24-10-2017 and the

Government rejected his representation on 07-04-2018. The Petitioner approached the Court only on 06-03-2020, without furnishing adequate grounds for the delay. The relief could not be granted. In the instant case although the State-Respondents were mute after the Petitioner No.1 filed his representation in 2015, he did not take further steps. The Petitioners were unable to place before this Court their grievances submitted before the Government allegedly in 2022 and 2023.

(iv) In *M/s. Tilokchand Motichand (supra)* it was *inter alia* held that where there is delay, there cannot be any relief. The Supreme Court propounded as follows;

“(10) If then there is no period prescribed what is the standard for this Court to follow? I should say that utmost expedition is the *sine qua non* for such claims. **The party aggrieved must move the Court at the earliest possible time and explain satisfactorily all semblance of delay.** I am not indicating any period which may be regarded as the ultimate limit of action for that would be taking upon myself legislative functions. **In England a period of 6 months has been provided statutorily, but that could be because there is no guaranteed remedy and the matter is one entirely of discretion. In India I will only say that each case will have to be considered on its own facts. Where there is appearance of avoidable delay and this delay affects the merits of the claim, this Court will consider it and in a proper case hold the party disentitled to invoke the extraordinary jurisdiction.**”

[emphasis supplied]

(v) On the point of the COVID-19 Pandemic being the reason for delay, reference is made to, *Cognizance for Extension of Limitation, In Re*²⁵ where it has been clearly held that;

“**2.** On 23-3-2020, this Court directed [*Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10*] extension of the period of limitation in all proceedings before courts/tribunals including this Court w.e.f. 15-3-2020 till further orders. On 8-3-2021 [*Cognizance for Extension of Limitation, In re, (2021) 5 SCC 452*], the order dated 23-3-2020 [*Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10*] was brought to an end, permitting the relaxation of period of limitation between 15-3-2020 and 14-3-2021. While doing so, it was made clear that the period of limitation would start from 15-3-2021.

²⁵ (2022) 3 SCC 117

3. Thereafter, due to a second surge in COVID-19 cases, the Supreme Court Advocates-on-Record Association (SCAORA) intervened in the suo motu proceedings by filing Miscellaneous Application No. 665 of 2021 seeking restoration of the order dated 23-3-2020 [*Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10*] relaxing limitation. The aforesaid Miscellaneous Application No. 665 of 2021 was disposed of by this Court vide order dated 23-9-2021 [*Cognizance for Extension of Limitation, In re, 2021 SCC OnLine SC 947*], wherein this Court extended the period of limitation in all proceedings before the courts/tribunals including this Court w.e.f. 15-3-2020 till 2-10-2021.

.....
5.1. The order dated 23-3-2020 [*Cognizance for Extension of Limitation, In re, (2020) 19 SCC 10*] is restored and in continuation of the subsequent orders dated 8-3-2021 [*Cognizance for Extension of Limitation, In re, (2021) 5 SCC 452*], 27-4-2021 [*Cognizance for Extension of Limitation, In re, (2021) 17 SCC 231*] and 23-9-2021 [*Cognizance for Extension of Limitation, In re, 2021 SCC OnLine SC 947*], it is directed that the period from 15-3-2020 till 28-2-2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.”

(vi) It is trite to notice from a perusal of the order that it pertains to the COVID-19 Pandemic of December, 2019, upon which National lockdowns were issued from March, 2020. In this backdrop it becomes essential to remark that the list of selected candidates, in order of seniority, which included the Petitioners and the private Respondents, were issued in 2018 consequently, this translates into the Judgment providing the Petitioners with no sustenance, the results which they impugn being of 14-09-2018 [Annexure P-13] and 01-10-2018 [Annexure P-10].

(vii) In the wake of the circumstances of the Petitioners’ case it is evident from the facts cited that, in September, 2012, they voluntarily did not seek to compete in the direct recruitment quota of 50%. In 22-01-2013, thirty-six posts were sought to be upgraded of which twenty-five were selected and appointed on 21-09-2016. The Petitioners’ claim to have been aggrieved by their non-selection but remained silent. In 2018, thirty-five posts were notified to be

“regularised”, and all private Respondents along with the Petitioners faced the interview board on 08-09-2018 constituted by Respondent No.4 (SPSC). This led to the impugned correspondence dated 14-09-2018 and Office Order dated 01-10-2018. The Petitioners chose not to articulate their grievances, even though dissatisfied with the impugned correspondence and order and ultimately approached this Court by way of the instant Writ Petition only on 28-08-2023. As seen from the foregoing Judgments, disturbance of seniority settled over an extended period of time or of persons who have been in their positions for three or four years is not encouraged to be tampered with. The grounds raised by the Petitioners for the delay, in my considered view, does not withstand the legal test. Whatever explanation has been put forth for the delay is not to the satisfaction of the conscience of this Court. The Petition being belated, in no uncertain terms is hit by delay and laches.

14. While determining Question no.(iv), Whether the reliefs sought for by the Petitioners can be moulded, the Supreme Court in ***Om Prakash Gupta vs. Ranbir B. Goyal***²⁶ observed that the Court **has the power to take note of subsequent events and mould the relief subject to the following conditions being satisfied;**

“11. (i) that the relief, as claimed originally has, by reason of subsequent events, become inappropriate or cannot be granted; (ii) that taking note of such subsequent event or changed circumstances would shorten litigation and enable complete justice being done to the parties; and (iii) that such subsequent event is brought to the notice of the court promptly and in accordance with the rules of procedural law so that the opposite party is not taken by surprise.” [emphasis supplied]

²⁶ (2002) 2 SCC 256

(i) The principle of moulding of reliefs was expounded at length in *Pasupuleti Venkateswarlu vs. Motor & General Traders*²⁷ and it was observed that;

"4. It is basic to our processual jurisprudence that the right to relief must be judged to exist as on the date a suitor institutes the legal proceeding. Equally clear is the principle that procedure is the handmaid and not the mistress of the judicial process. If a fact, arising after the lis has come to court and has a fundamental impact on the right to relief or the manner of moulding it, is brought diligently to the notice of the tribunal, it cannot blink at it or be blind to events which stultify or render inept the decretal remedy. Equity justifies bending the rules of procedure, where no specific provision or fairplay is violated, with a view to promote substantial justice – subject, of course, to the absence of other disentitling factors or just circumstances. Nor can we contemplate any limitation on this power to take note of updated facts to confine it to the trial court. If the litigation pends, the power exists, absent other special circumstances repelling resort to that course in law or justice. Rulings on this point are legion, even as situations for applications of this equitable rule are myriad. We affirm the proposition that for making the right or remedy claimed by the party just and meaningful as also legally and factually in accord with the current realities, the Court can, and in many cases must, take cautious cognisance of events and developments subsequent to the institution of the proceeding provided the rules of fairness to both sides are scrupulously obeyed."

[emphasis supplied]

(ii) In *Ramesh Kumar vs. Kesho Ram*²⁸ the Supreme Court observed that;

"6. The normal rule is that in any litigation the rights and obligations of the parties are adjudicated upon as they obtain at the commencement of the lis. But this is subject to an exception. Wherever subsequent events of fact or law which have a material bearing on the entitlement of the parties to relief or on aspects which bear on the moulding of the relief occur, the court is not precluded from taking a 'cautious cognizance' of the subsequent changes of fact and law to mould the relief."

(iii) In my considered view, the Petition has been filed seeking specific reliefs, there are no subsequent changes of fact or law brought to the notice of this Court which would alter the entitlement

²⁷ (1975) 1 SCC 770

²⁸ 1992 Supp (2) SCC 623

of the Petitioners on the anvil of which the reliefs can be moulded by this Court. Hence, this prayer of the Petitioners fails.

15. While determining the fifth question settled for determination (*supra*), whether the Petitioners can challenge the process of examination having appeared in it, in **Babita Rani** (*ibid*) it was observed *inter alia* that, the process of selection conducted by the Respondent University for the purposes of appointment to the post of Lecturers in Physics, was based solely on the performance in the interview. No criteria was followed and no grading of candidates was done, the basis of the *inter se* merit of the candidates and determination was not discernable. Upholding the Judgment of the Learned Single Judge, the Division Bench observed that, it was incumbent upon the Interview Committee to have assessed and adjudged all the candidates appearing before it, in terms of reasonable and relevant parameters, in the nature of qualifications possessed, work experience, research, etc., which was ignored by the Interview Committee. The selection was found not sustainable. In the present case, in the first instance it is to be remarked that no objections was raised with regard to the interview that was held on 08-09-2018, after it was conducted. In fact, on earlier occasion the Petitioners by filing a representation had expressed their reluctance to take the written examination and compete with fresh Graduates as they were engaged in important works of the Government. The objection to the interview of 08-09-2018 was rather belatedly raised in the year 2023, whereas in **Babita Kumari** (*ibid*), the advertisement for the concerned post was issued on 04-08-2008, interview conducted on 22-10-2009 and letters of appointment issued by the Respondent University on 30-10-2009. It is apparent that the Writ

Petition was filed in the year 2009 (Civil Writ Petition No.18735 of 2009). Thus, the challenge was immediate and relief thereby granted. This is not the situation in the instant case, rendering nugatory the objection raised by the Petitioners on this count. Besides, from the litany of Judgments relied on hereinbelow it emanates with clarity that once the candidates have participated in the examination/interview, they cannot assail the procedure or other parameters adopted when they emerge unsuccessful.

(i) In *Dr. Sunil Kumar and Others vs. Punjabi University and Others*²⁹ reference was made to the decision of *R. Chitralekha (supra)*, where it was observed that if there is dishonesty in allotting marks to a candidate in interview, there could be some flaw in awarding marks in written examination. There has been no claim of dishonesty alleged by the Petitioners in the allotment of marks. In *Ajay Hasia (supra)* it was observed that, oral interview was not satisfactory and should not be relied upon as an exclusive test and also on *D. V. Bakshi and Others vs. Union of India and Others*³⁰. Those matters pertained to direct recruitments and is not relevant for matters where the Petitioners were already in service and had themselves requested the Government by way of a representation not to hold written examination, but to relax the rules upon which, only an interview was conducted by Respondent No.4.

(ii) In *Om Prakash Shukla (supra)* a three Judge Bench of the Supreme Court taking note of the fact that the Petitioner in the Writ Petition had appeared for the examination, without protest and filed the Writ Petition only after he realised that he could not succeed in the examination, it was held that, the Writ Petitioner should not have

²⁹ CWP No.18735 of 2009 decided on 23-08-2011 of the High Court of Punjab and Haryana

³⁰ AIR 1993 SC 2374

been granted any relief by the High Court. In *Madan Lal (supra)* it was observed that it is now well settled that, if a candidate takes a calculated chance and appears at the interview, then, only because the result of the interview is not palatable to him, he cannot turn round and subsequently contend that the process of interview was unfair or the Selection Committee was not properly constituted. In *Chandra Prakash Tiwari and Others vs. Shakuntala Shukla and Others*³¹ the Court observed as follows;

"34. There is thus no doubt that while question of any estoppel by conduct would not arise in the contextual facts **but the law seems to be well settled that in the event a candidate appears at the interview and participates therein, only because the result of the interview is not "palatable" to him, he cannot turn round and subsequently contend that the process of interview was unfair or there was some lacuna in the process."**

[emphasis supplied]

(iii) In *Union of India and Others vs. S. Vinodh Kumar and Others*³² the Court reiterated that those candidates who had taken part in the selection process knowing fully well the procedure laid down there they were not entitled to question the same.

(iv) In *Tajvir Singh Sodhi (supra)* the Supreme Court reiterating the well-settled principle that once the candidate has appeared for the examination he cannot challenge the process when he is unsuccessful, observed at Paragraph 58 as follows;

"58. The criteria for evaluation of a candidate's performance in an interview may be diverse and some of it may be subjective. **However, having submitted to the interview process with no demur or protest, the same cannot be challenged subsequently simply because the candidate's personal evaluation of his performance was higher than the marks awarded by the panel."**

[emphasis supplied]

(v) This principle was also recognised in *D. Sarojakumari vs. R. Helen Thilakom and Others*³³, wherein the main ground urged on behalf of the Appellants was that, the Respondent No.1 having taken part in

³¹ (2002) 6 SCC 127

³² (2007) 8 SCC 100

³³ (2017) 9 SCC 478

the process could not be permitted to challenge the same after she was unsuccessful in getting selected. It was held that the law is well-settled that once a person takes part in the process of selection and is not found fit for appointment the said person is estopped from challenging the process of selection. Reference was made by the Supreme Court to a plethora of Judgments on the same point and it was concluded as follows;

"11. As far as the present case is concerned, an advertisement was issued by Respondent 6 inviting applications for the post of Music Teacher in Samuel LMS High School. **Respondent 1 did not raise any objection at that stage that the post could not be filled in by direct recruitment and she should be considered for promotion. Not only that, she in fact, applied for the post and took part in the selection process. After having taken part in the selection process and being found lower in merit to the appellant, she cannot at this stage be permitted to turn around and claim that the post could not be filled in by direct recruitment.** The reasoning of the learned Single Judge in rejecting the objection is not in consonance with the law laid down by this Court. In view of this, we need not go into the other issues raised." [emphasis supplied]

(vi) It was also observed *inter alia* that **competitive examination may be based exclusively on written examination or it may be based exclusively on oral interview or it may be a mixture of both and it is entirely for the Government to decide what kind of competitive examination would be appropriate in a given case.**

(vii) In *Ashok Kumar Yadav and Others vs. State of Haryana and Others*³⁴ it was expounded that the Government is the competent authority to decide the mode of selection examination. It was held as follows;

"23. This Court speaking through Chinnappa Reddy, J. pointed out in *Lila Dhar v. State of Rajasthan* [(1981) 4 SCC 159] that the object of any process of selection for entry into public service is to secure the best and the most suitable person for the job, avoiding patronage and favouritism. Selection based on merit, tested impartially and objectively, is the essential foundation of any useful and efficient public service. So open competitive examination has come to be accepted

³⁴ (1985) 4 SCC 417

almost universally as the gateway to public services. But the question is how should the competitive examination be devised? **The competitive examination may be based exclusively on written examination or it may be based exclusively on oral interview or it may be a mixture of both. It is entirely for the Government to decide what kind of competitive examination would be appropriate in a given case.** To quote the words of Chinnappa Reddy, J. "In the very nature of things it would not be within the province or even the competence of the Court and the Court would not venture into such exclusive thickets to discover ways out, when the matters are more appropriately left" to the wisdom of the experts. **It is not for the Court to lay down whether interview test should be held at all or how many marks should be allowed for the interview test."**

(viii) The principles settled by the afore-extracted Judgments are appositely applicable to the Petitioners who having taken part in the examination, sans demur, are now doing a somersault and impugning the procedure and the results without any valid grounds. This posturing of the Petitioners is not legally permissible.

16. While addressing the sixth Question, Whether the Writ Petition was defective for non-impleadment of necessary parties, the Supreme Court in *Ranjan Kumar (supra) inter alia* held that where all appointees were not impleaded the Writ Petition was defective and no relief could have been granted to the Writ Petitioners.

(i) In *KM. Rashmi Mishra vs. M. P. Public Service Commission and Others*³⁵ the question in appeal before the Supreme Court was the validity/legality of the selection process involved in selecting Assistant Registrars, Class II gazetted post. The Supreme Court observed that;

"30. In the instant case, however, as all the selected candidates were not impleaded as parties in the writ petition, no relief can be granted to the appellant."

(ii) In *Prabodh Verma and Others vs. State of Uttar Pradesh and Others*³⁶ the Supreme Court was of the view that;

"28. The first defect was that of non-joinder of necessary parties. The only respondents to the Sangh's petition were the State of

³⁵ (2006) 12 SCC 724

³⁶ (1984) 4 SCC 251

Uttar Pradesh and its concerned officers. Those who were vitally concerned, namely, the reserve pool teachers, were not made parties – not even by joining some of them in a representative capacity, considering that their number was too large for all of them to be joined individually as respondents. The matter, therefore, came to be decided in their absence. A High Court ought not to decide a writ petition under Article 226 of the Constitution without the persons who would be vitally affected by its judgment being before it as respondents or at least by some of them being before it as respondents in a representative capacity if their number is too large, and, therefore, the Allahabad High Court ought not to have proceeded to hear and dispose of the Sangh's writ petition without insisting upon the reserve pool teachers being made respondents to that writ petition, or at least some of them being made respondents in a representative capacity, and had the petitioners refused to do so, ought to have dismissed that petition for non-joinder of necessary parties.”

[emphasis supplied]

(iii) Prayer (H) of the Writ Petition is specific in its details.

The Petitioners seek modification of Office Order No.1420/G/DOP, dated 21-09-2016, to the extent of placing Petitioner No.1 in any order of senior as the earlier appointee. Assuming that the relief was to be extended to the Petitioner No.1 his placement in the list with the twenty-five Engineers selected would affect them, as the Petitioner seeks placement in any order of seniority. Thus, the persons who may be affected are not a party to the Petition, which therefore must fail for non-joinder of necessary parties.

(iv) While thus parting with the matter, it may be remarked that the State-Respondents appear to be in a conundrum regarding the concept of “regularization”, “upgradation”, “promotion” and “direct recruitment”. It is unfathomable as to how in the instant matter an employee who is selected for promotion can be appointed as a ‘direct recruit’ by way of regularisation as appears in the impugned correspondence dated 14-09-2018. The State-Respondents would be well advised to define the terms *viz.*, “regularization”, “upgradation” and “promotion” in all relevant rules with clarity henceforth, in terms of the Judgment of the Supreme

Court in ***Bharat Sanchar Nigam Limited*** (*supra*) for guidance of all concerned, including the Respondent No.4 (SPSC). “Direct recruitment” may be explained in terms of the decision in ***Union of India and Others vs. S. D. Gupta and Others*** (*ibid*).

17. In light of the foregoing discussions and the reasons set forth in every question framed for determination, I am of the considered view that the Petitioners are not entitled to the reliefs claimed.

18. Writ Petition stands dismissed and disposed of accordingly.

(Meenakshi Madan Rai)
Judge

22-09-2025

Approved for reporting : **Yes**