

SUNIL & ORS.

v.

HIGH COURT OF DELHI & ORS. ETC.

(Civil Appeal Nos. 2883-2885 of 2023)

APRIL 28, 2023

[M. R. SHAH* AND SANJAY KAROL, JJ.]

Service Law – Inter-se seniority – Filling of vacant posts of private secretaries in the High Court of Delhi – Written examination was conducted – Results were declared – Writ petitions filed by some of the candidates seeking re-evaluation – High Court constituted a Special Committee, which recommended re-evaluation of 13 candidates, resulting in increased marks for all – Revised list was drawn – Issue of inter-se seniority arose – Special Committee by its decision dated 01.10.2018 accorded notional seniority as per the revised marks/merit list – Held: Considering the fact that the earlier decision of re-evaluation of 13 candidates attained the finality and thereafter, the marks of 13 candidates came to be increased, the Special Committee was absolutely justified in its decision dated 01.10.2018 to accord notional seniority as per the revised marks/merit list – Once on re-evaluation, the marks are increased the respective candidates whose marks are increased will have to be placed at appropriate place in the merit list – Non-grant of seniority based on revised marks, thus, would render the process of re-evaluation redundant.

Allowing the appeals, the Court

HELD:

1. **Considering the fact that the earlier decision of re-evaluation of 13 candidates attained the finality and thereafter, the marks of 13 candidates came to be increased, the Special Committee was absolutely justified in its decision dated 01.10.2018 to accord notional seniority as per the revised marks/merit list. At the relevant time, none of the selected candidates (22 candidates – respondents herein) applied for re-evaluation and even challenged the decision of the Special Committee to re-evaluate the marks of only 13 candidates. Having failed to challenge the earlier decision to have the re-evaluation of 13 candidates only and even having not applied for the re-evaluation at the relevant time though the exercise of re-evaluation was going on thereafter, it was not open**

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for the respondents to make a grievance subsequently that the re-evaluation of the marks of 13 candidates cannot be at their disadvantage. Once on re-evaluation, the marks are increased the respective candidates whose marks are increased will have to be placed at appropriate place in the merit list. Non-grant of seniority based on revised marks, thus, would render the process of re-evaluation redundant. The candidates whose marks have been increased cannot be deprived of their position in the select list dated 30.01.2017 and on the correction of error, they were required to be given the benefit of notional seniority i.e., inter se seniority on the basis of merit. There was no fault on the part of the appellants. It was because of the wrong marking at the relevant time they were deprived of the appointments and they were not placed in the merit list and as such was required to be corrected on the revision of the marks on re-evaluation. Therefore, the Special Committee was absolutely justified in taking the decision dated 01.10.2018 to accord the notional seniority in accordance with the revised marks to candidates. The Division Bench of the High Court has materially erred in setting aside the conscious decision taken by the Special Committee to accord the notional seniority in accordance with the revised marks to candidates. [Para 7]

K. Meghachandra Singh & Ors. v. Ningam Siro & Ors. (2020) 5 SCC 689 : [2019] 16 SCR 651; *Centre for Public Interest Litigation v. Registrar General of Delhi High Court W.P. (C) No. 712/2015*; *Nani Shah and Ors. v. State of Arunachal Pradesh and Ors.*, (2007) 15 SCC 406 : [2007] 6 SCR 1027; *State of Uttar Pradesh and Ors. v. Ashok Kumar Srivastava* (2014) 14 SCC 720 : [2013] 11 SCR 846 – referred to.

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2883-2885 of 2023.

From the Judgment and Order dated 28.09.2022 of the High Court of Delhi at New Delhi in WPC Nos. 949, 7893 of 2019 and 10668 of 2022.

With

Civil Appeal No. 2886 of 2023.

Chander Uday Singh, Maninder Singh, Sr. Advs., Ms. Bhavana Duhoon, Anshul Syal, Ms. Bidya Mohanty, Amjid Maqbool, Ankur Chhibber, H. S. Tiwari, Anshuman Mehrotra, Nikunj Arora, Ms. Ashita Chawala, Santosh Kumar Vishwakarma, Santosh Kumar Pandey, Advs. for the Appellants.

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C. A. Sundaram, P. S. Patwalia, Sr. Advs., S. Kaushal, Ms. Madhavi Khare, K. Krishna Kumar, Neeraj Shekhar, Dr. Sumit Kumar, Keshav Baheti, Ms. Mrigna Shekhar, Ashutosh Thakur, Advs. for the Respondents.

The Judgment of the Court was delivered by

M. R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned common judgment(s) and order(s) passed by the High Court of Delhi at New Delhi in Writ Petition (C) Nos. 949 of 2019, 7893 of 2019 and 10668 of 2022, the original respondents have preferred the present appeals.
2. The facts leading to the present appeals in nutshell are as under:-
 - 2.1 Applications were invited by the High Court of Delhi in the year 2016 to fill up 27 vacant posts of private secretaries. Written examination was held on 04.07.2016, in which 135 candidates appeared. Skill and typing test were held on 05.07.2016 and the result of the written examination was declared on 22.12.2016. Before the declaration of the final merit list, three candidates filed representations seeking rechecking of their answer sheets. The Selection Committee rejected the representations observing that there was no provision for rechecking/ re-evaluation of the answer sheets in the Delhi High Court (Appointment and Condition of Service) Rules, 1972. The interviews of the successful candidates were held on 19.01.2017/25.01.2017.
 - 2.2 One Garima Madan obtained copy of her answer sheet and made a representation dated 27.01.2017 requesting the Competent Authority to re-evaluate/re-check certain answers and grant her an opportunity to appear in the interview. Meanwhile, the final merit list pursuant to the written examination and interviews was published and uploaded on the internet on 30.01.2017. Notification was issued by the High Court notifying the appointments made to the post of private secretaries appointing 27 candidates including the original writ petitioners before the High Court. The respondent – Dinesh Kumar was also provided with a copy of his answer sheet pursuant to his application.
 - 2.3 After the declaration of the merit list, few candidates, who had obtained copies of their answer sheets, namely, Ms. Garima Madan; Ms. Sapna Sethi, Mr. Sumit Ghai and Ms. Shitu Nagpal

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filed representations in the month of February, 2017, seeking re-evaluation of their answer sheets.

- 2.4 The Writ Petition (C) No. 4260 of 2017 was filed before the High Court by the candidates seeking re-evaluation. By order dated 17.05.2017, the Delhi High Court directed the Acting Chief Justice of the High Court to take an independent decision of reappraisal with respect to the evaluation/marks. A Special Committee was constituted by the Acting Chief Justice on 23.05.2017 to decide the issue pertaining to the evaluation of certain questions in respect of the examination. While these proceedings were ongoing, further representations were filed by candidates for re-evaluation. Total of 13 candidates submitted the representations for re-evaluation. At this stage, it is required to be noted that out of 13 candidates, 05 candidates have already been appointed vide notification dated 02.02.2017 and the remaining 08 as such were not appointed.
- 2.5 A meeting of the Special Committee was convened on 12.07.2017 and it was decided that an independent examiner would be appointed to carry out re-evaluation which will be limited to 13 candidates as the other candidates have accepted the marks awarded to them. The High Court disposed of the pending writ petitions as the Special Committee recommended re-evaluation of answer sheets. That pursuant to the re-evaluation of the 13 candidates, the marks of all the 13 candidates came to be increased. The High Court disposed of the writ petitions noting that re-evaluation of the answer sheets has been concluded and it was observed that it would be appropriate for the Special Committee to consider the report of the re-evaluation and recommend the further course of action and, thereafter, the result be notified.
- 2.6 The Special Committee on 12.09.2017 directed copy of re-evaluation results be given to the 13 candidates as also to the already appointed 27 private secretaries. It was further directed that the same be uploaded on the intranet and also displayed on the notice board.
- 2.7 That thereafter one Saphalta Bhati filed the Writ Petition (C) No. 8255 of 2017 before the High Court praying for re-evaluation, which came to be dismissed by the High Court by order dated 15.09.2017 on the grounds of delay and laches. The

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review application also came to be dismissed vide order dated 27.10.2017. That thereafter on 01.03.2018, the Acting Chief Justice took a decision that those candidates, whose marks have been increased and their marks are found to be higher than the candidates already appointed, they may be appointed against the vacant 22 vacancies of private secretaries without disturbing those 27 candidates already appointed. At this stage, it is required to be noted that in the administrative note dated 01.03.2018, it was observed by the Acting Chief Justice that because of limited re-evaluation of only 13 candidates, that too, to limited questions, an unfortunate situation has resulted. However, if re-evaluation of all papers is now undertaken, it would result in unwarranted delay and the appointments having been effected one year ago, it is difficult to set the clock back. Therefore, the Acting Chief Justice took a decision that 08 candidates whose marks have been increased on re-evaluation and are found to be having more marks than the candidates already appointed, they may be appointed against 22 vacancies vacant as those 08 candidates would stand qualified upon re-evaluation. The Acting Chief Justice also observed that the issue which requires consideration is as to how to fix the seniority and, therefore, the matter was referred to the Special Committee on the aspect of fixation of seniority.

- 2.8 The Special Committee in its meeting held on 07.03.2018 recommended that the 05 already selected candidates whose papers were re-evaluated, would now still be entitled to grant of benefit of seniority vis-à-vis the other private secretaries and with those who were newly selected would be at the bottom of the seniority (in case of 06 newly selected). That the re-evaluated result was declared and uploaded on the internet as also displayed on the notice board on 12.03.2018. Thereafter, a notification dated 14.03.2018 recommending appointment of 06 newly selected candidates came to be issued w.e.f. 12.03.2018.
- 2.9 That thereafter the respondent – original writ petitioner - Dinesh Kumar moved a representation seeking re-evaluation on 25.05.2018, i.e., after a period of 15 months from the date of obtaining the copy of answer sheet on 20.02.2017. Other similar writ petitions were also filed belatedly. That thereafter the appellants herein – the candidates, who were dissatisfied by the denial of seniority as per the increased marks, filed

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representations on 16.07.2018 with a request that their seniority be considered as per the revised marks and they may be put in the seniority list / select list on appropriate places. That all the representations were placed before the Special Committee on 20.07.2018. The Special Committee rejected the representation of the respondent – Dinesh Kumar stating that relief of re-evaluation cannot be granted at a belated stage and in light of order in the case of **Saphalta Bhati (supra)**. However, thereafter on the representations made by the appellants and the other candidates, who were dissatisfied by the denial of seniority as per the increased marks, in the meeting dated 01.10.2018, the Special Committee decided to accord notional seniority in accordance with revised marks to the candidates. Accordingly, the revised merit list was drawn up and uploaded on the intranet on 23.10.2018. A final notification declaring the seniority in terms of marks obtained by each candidate was uploaded on 15.01.2019.

- 2.10 Subsequently, in the meantime, one Ms. Sapna Sethi filed a Writ Petition (C) No. 2863 of 2018 before the High Court directing that her case be considered by the Special Committee. In the meeting held on 21.02.2019, the Special Committee considered the case of Ms. Sapna Sethi, who was previously an unsuccessful candidate, and awarded her 3.5 extra marks. That thereafter, the respondent herein – the original writ petitioner – Dinesh Kumar aggrieved by the issuance of the revised merit list filed the Writ Petition (C) No. 949 of 2019 before the High Court. In the writ petition, he also prayed for re-evaluation of the answers.
- 2.11 A batch of 21 candidates (respondents herein), who were already appointed earlier filed Writ Petition (C) No. 7893 of 2019 *inter alia* on the ground that their rank has been affected as a result of the merit list dated 23.10.2018. That a further revised list was again issued by the High Court on 17.12.2021 after incorporating the name of Ms. Sapna Sethi. Respondent – Dinesh Kumar also filed Writ Petition (C) No. 10668 of 2022 aggrieved by the revised merit list of 17.12.2021.
- 2.12 By the impugned common judgment and order, the High Court has allowed the aforesaid writ petitions and has set aside the merit lists dated 23.10.2018 and 17.12.2021 and directed that the seniority of candidates mentioned in Final merit list issued

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on 30.01.2017 and those who were granted the benefit of re-evaluation would be considered as appointed on 30.01.2017, however, their seniority and position shall be reckoned after last appointed candidate. Hence the present appeals.

3. Shri C.U. Singh, learned Senior Advocate appearing on behalf of the appellants in C.A. Nos. 2883-85/2023 has submitted that the respective appellants were earlier not in the select list due to incorrect marking. It is submitted that thereafter on re-evaluation they secured more marks than the last selected candidate and therefore, they were not only entitled to the appointment but also to be ranked in accordance with the revised marks in the merit list which determines their seniority for future promotions.
 - 3.1 It is submitted that on merit list being revised due to change in the marking on re-evaluation, earlier the Special Committee rightly took a decision to give the seniority to the appellants as per the marks obtained. It is submitted that the same has now been un-done by the High Court and the appellants have been directed to be placed at the bottom of the seniority list despite the fact that their appointments w.e.f. 30.01.2017 i.e., the date of publication of first merit list has been upheld.
 - 3.2 It is submitted that despite being aware of the flawed marking and the fact that the High Court was considering the issue of re-evaluation based on the representations and writ petitions filed by 13 candidates, respondents made no attempt till November, 2018 to seek re-evaluation. It is submitted that respondents were well aware that a direction was passed by the High Court of Delhi in its order dated 20.07.2017 that the re-evaluation would be confined to the grievance articulated by 13 candidates. It is submitted that the re-evaluation was closed vide order dated 30.08.2017, the respondents consciously opted to not initiate any action either to challenge the orders or to seek re-evaluation, despite having knowledge as the said exercise being undertaken and the results thereof were furnished to them on 12.09.2017. It is submitted that 5 out of initially selected 27 candidates were prompt in seeking re-evaluation, unlike the remaining 22 already selected candidates.
 - 3.3 It is submitted that furthermore, in the case of **Saphalta Bhati (supra)** the High Court denied the re-evaluation on the grounds

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of delay and laches which attained the finality. It is submitted that respondents were fence sitters and it is well settled law that while exercising public law jurisdiction, the courts should not encourage stale claims especially when rights of third parties have been crystalized in the interregnum.

- 3.4 It is further submitted that the High Court in paragraph 68 of the impugned order has expressly upheld the appointment of the appellants from 30.01.2017 which was not challenged by the respondents herein. It is submitted that therefore, the contention of the respondents that the appointment ought to have been w.e.f. 12.03.2018 is erroneous. It is submitted that once the appellants were appointed w.e.f. 30.01.2017 they ought to have been given the benefit of their revised marks as mere appointment from 30.01.2017 confers no benefit on the appellants.
- 3.5 It is submitted that being a selection based on merit, the rank in the merit list would determine the seniority of the candidates and merely granting notional seniority w.e.f. 30.01.2017 has no bearing. The length of service is immaterial as it was on the basis of position earned in the merit list that a candidate becomes entitled to future appointment.
- 3.6 It is submitted that notional seniority is to grant the benefit of seniority without any back wages, arrears and other benefits as ought to have been done in the present case. It is submitted that appellants, though no fault of their own, as a result of wrong marking were deprived of their position in select list dated 30.01.2017 and on the correction of the marking ought to have been given the benefit of notional seniority i.e., inter se seniority on the basis of merit.
- 3.7 It is further submitted that the whole foundation of the exam was to draw out a merit list on the basis of marks obtained. Exercise of re-evaluation was carried out for a total 13 candidates, of which 5 candidates were already in the select list notified on 30.01.2017.
- 3.8 It is submitted that carrying out the exercise of re-evaluation of 13 candidates which included candidates who were already selected to the posts of private secretaries could have been done only with the intention of giving the benefit of rank based on merits. It is submitted that if there was no intention to grant

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inter se seniority based on marks, there would have been no reason to admit the 5 already selected candidates to the process of re-evaluation rendering the entire exercise redundant.

- 3.9 It is submitted that all recommendations and decisions of Special Committee have been superseded by Minutes dated 01.10.2018, which the High Court has upheld. It is submitted that grant of notional seniority can only mean placing the candidates as per their merit. The said incorrect marking was under challenge before issuance of the said select list dated 30.01.2017 and the same, thus, had not attained finality.
- 3.10 It is submitted that the contention of the respondents that as the appellants were to be adjusted against the additional vacancies is erroneous. It is submitted that the Acting Chief Justice in paragraph 31 of note dated 01.03.2018 had noted that “on date there are 22 vacancies in the post of Private Secretary under 75% test quota in our court. Therefore, there is no difficulty with regard to appointment of those who stand qualified upon the limited re-evaluation without effecting the appointments made earlier. The issue which requires consideration is the issue of how the seniority of these persons is to be fixed and whether any re-fixation is necessary.”

It is submitted that the consideration of the Acting Chief Justice was, thus, that in the event the vacancies were not there, the re-evaluation may have the result of disturbing the appointments of certain private secretaries already made, whose marks are now lower than those of the appellants.

- 3.11 It is further submitted that the prayers in the writ petitions at the instance of the respondents herein were in conflict with each other. The respondents on the one hand sought re-evaluation and on the other hand sought to quash the revised merit list denying successful candidates the benefit of re-evaluation especially when the post in question was a selection-cum-merit post.
- 3.12 It is submitted that the Acting Chief Justice was posed with an exceptional and emergent situation as a result of incorrect evaluation and the actions taken were within the domain as it had no malafides or bias. It is submitted that in fact the re-evaluation and adjustment of candidates against the additional vacancies has also been upheld vide the impugned order which has not been challenged by the respondents.

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- 3.13 It is submitted that as findings of the High Court upholding the re-evaluation has not been assailed, the consequences of re-evaluation ought to be taken to the logical end i.e., grant of inter se seniority to appellants based on merit viz-a-viz other candidates.
- 3.14 It is further submitted that the decision of this Court in the case of **K. Meghachandra Singh & Ors. Vs. Ningam Siro & Ors.** (2020) 5 SCC 689 and judgement of this Court in W.P. (C) No. 712/2015 in the case of **Centre for Public Interest Litigation Vs. Registrar General of Delhi High Court** relied upon by learned counsel appearing on behalf of the respondents shall not be applicable to the facts of the case on hand.
- 3.15 Making the above submissions it is prayed to allow the present appeals.
4. Shri Maninder Singh, learned Senior Advocate, appearing on behalf of the appellants in C.A. No. 2886/2023 – 5 appellants, who as such were already appointed in the first select list dated 30.01.2017 but who applied for re-evaluation as such made the same submissions which are made by Shri C.U. Singh, learned Senior Advocate.
- 4.1 It is submitted that the respective appellants were prompt in applying for re-evaluation of the answers though they were selected in the first merit list dated 30.01.2017 and their marks came to be increased on re-evaluation. It is submitted that therefore, the respective appellants shall be entitled to the benefit of the revised marks and they are to be placed appropriately at appropriate place in the selection list/merit list. It is submitted that not to grant such a relief would tantamount to not granting any benefit of increase of marks on re-evaluation.
- 4.2 Making the above submissions it is prayed to allow the present appeal – C.A. No. 2886/2023.
5. Shri C.A. Sundaram and Shri P.S. Patwalia, learned Senior Advocates have appeared on behalf of the contesting respondents – original writ petitioners. It is submitted by learned Senior Advocates appearing on behalf of the respective respondents that it will be highly inequitable and grossly unjust, apart from being ex-facie illegal, to sustain revision of merit list to the detriment of the respondents due to following reasons: -

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- 5.1 Respondents never got an opportunity for re-evaluation of their answer-sheets as has been given to the appellants herein. They had no occasion to seek re-evaluation earlier as they were selected and appointed on 30.01.2017 itself as per the merit list published at first. Re-evaluation of the appellants herein was due to court orders and decision of Special Committee even in absence of provision of re-evaluation in the relevant rules. It was a special concession. Assuming that there was a provision of re-evaluation, then the same process ought to have been extended to every candidate who was going to be affected;
- 5.2 After an independent & different examiner re-evaluated the answer-sheets of candidates, marks of all 13 increased and had that the same opportunity been extended to the present respondents, their marks could have also increased. Partial re-evaluation has resulted in an anomaly. For example, Dinesh Kumar's (R2) answer to Question 3(a)(vi) in written test was 'Slavery' and he had been awarded 0 marks for it. However, upon re-evaluation, the appellants were awarded 2 marks for the same answer. Thus, despite being eligible for 2 additional marks, Dinesh Kumar was demoted in the 2nd and 3rd Merit List. As a result, the answering respondents were placed below less meritorious candidates despite being more meritorious than them and an absurd situation had arisen. Thus, the High Court was justified in setting aside the 2nd and 3rd Merit List;
- 5.3 Even the Acting Chief Justice vide order dated 01.03.2018, opined that an unfortunate situation had arisen due to partial re-evaluation of only 13 candidates as the marks of all 13 candidates had increased and ideally all papers should have been re-evaluated on identical standards. Further, the Special Committee decided on 07.03.2018 that the ranks awarded vide 1st Merit List will not be disturbed and the newly selected candidates will be placed at the bottom of the select list as re-evaluation cannot confer any benefit of seniority, which was, as per the committee, only way to ensure complete and equitable justice to all the candidates. Therefore, Notification dated 14.03.2018 directing appointment of appellants stated that they will be placed at the bottom of the select list after the last successful candidate in the 1st Merit List. The said being the background of appointment of the appellants, the same ought not

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to have been disturbed subsequently. Revised Merit List dated 23.10.2018 was in violation of the recommendations made by the Special Committee on 07.03.2018 which was duly approved by the then Acting Chief Justice on 14.03.2018;

- 5.4 Appellants have not challenged the Notification dated 14.03.2018 till date which granted them conditional appointment i.e., they agreed to be placed at the bottom of the original select list upon appointment without disturbing the seniority of originally selected candidates. Thus, having accepted conditional appointment, the appellants cannot be allowed to steal a march over originally selected candidates;
- 5.5 The special concession granted to the appellants is further established by the fact that they were given appointment against future vacancies, and not the ones advertised in 2016. Equity in favor of the appellants cannot be stretched to defeat the equities in favor of the respondents. Special concession cannot override vested rights.
- 5.6 It is further submitted that as per the settled principle of law a candidate can be granted seniority only from the date he is borne in the cadre and not retrospectively. Reliance is placed on the following decisions of this Court in the case of **K. Meghchandra Singh (supra) (para 37-39), Nani Shah and Ors. Vs. State of Arunachal Pradesh and Ors., (2007) 15 SCC 406 (para 16) and State of Uttar Pradesh and Ors. Vs. Ashok Kumar Srivastava, (2014) 14 SCC 720 (para 24).**
- 5.7 Making the above submissions, it is prayed to dismiss the present appeals by submitting that by the impugned judgment and order the High Court has tried to do the justice between the parties by protecting the appointments of appellants as well as seniority of the respondents.
6. Heard learned counsel appearing on behalf of the respective parties at length.
 - 6.1 The issue before this Court for consideration is: whether the appellants herein whose marks were increased pursuant to the exercise of re-evaluation are entitled to be ranked in accordance with the revised marks in the merit list which determines their seniority for future promotions?

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6.2 At the outset, it is required to be noted that the result of written examination was declared on 22.12.2016. Before declaration of the merit list, 3 candidates had filed representations seeking re-checking of their answer sheets between 22.12.2016 to 18.01.2017 which was rejected. Interviews of successful candidates were held on 19/25.01.2017. The final merit list pursuant to the written examination and interviews was published and uploaded on internet on 30.01.2017. Appointment of 27 candidates as Private Secretaries came to be notified on 02.02.2017. Respondent – Dinesh Kumar was also provided with a copy of his answer sheet pursuant to his application on 13.02.2017. After the declaration of the merit list, 4 candidates sought re-evaluation which were rejected. 8 writ petitions including those by appellants came to be filed before the High Court regarding re-evaluation. The High Court passed an order that having regard to the peculiar features, the Acting Chief Justice may consider taking an independent decision as to whether the award of marks in respect of the questions involved in these petitions required to be reappraised independently. That thereafter, the Special Committee consisting of 3 Judges was constituted to decide the issue of re-evaluation. While these proceedings were ongoing further representations were filed by candidates for re-evaluation. Total 13 candidates had either filed writ petitions/representations praying for re-evaluation. The meeting of Special Committee held on 10.07.2017 decided that an independent examiner would be appointed to carry out and that the re-evaluation which will be limited to 13 candidates as the other candidates have accepted the marks awarded to them. The Special Committee also took a decision that the re-evaluation would be done of only those questions which were challenged by writ petitioners/re-presentationists. The decision of the Special Committee dated 10.07.2017 attained the finality. At this stage, it is required to be noted that out of 13 candidates, who either filed writ petitions/representations, 5 candidates were as such already appointed pursuant to the earlier select list/merit list dated 30.01.2017. Still they applied for re-evaluation/rechecking. That thereafter, after the re-evaluation of the 13 candidates, marks of all 13 candidates increased. The Special Committee in its meeting held on 12.09.2017 directed copy of re-evaluation results be given to the 13 candidates as also to

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the already appointed private secretaries and also directed to be uploaded on the internet and also displayed on the notice board. Thus, results were, therefore, made known to already selected candidates. In the meantime, one Saphalta Bhati filed writ petition before the High Court praying for re-evaluation which came to be dismissed on the grounds of delay and laches. That thereafter, the question arose what should be done on increasing the marks on re-evaluation. As such on increasing the marks on re-evaluation, the 8 candidates who earlier were deprived of their appointments were required to be appointed and out of 27 candidates, a few already appointed were likely to be affected, therefore, a conscious decision was taken by the Acting Chief Justice to appoint those who stand qualified upon re-evaluation and their appointments to be adjusted against the additional vacancies. At this stage, the administrative note of the Acting Chief Justice is required to be referred to which reads as under: -

“Because of limited re-evaluation of only 13 candidates an unfortunate situation has resulted. However, if re-evaluation of all papers is now undertaken, it would result in unwarranted delay and that appointments having been effected 1 year ago, it is difficult to set the clock back.

As there are 22 vacancies of PS under 75% test quota, there is no difficulty with regard to appointment of those who stand qualified upon re-evaluation. The issue which requires consideration is the issue of how the seniority of these persons is to be fixed and whether any re-fixation is necessary.

Matter referred to the Special Committee is on the aspect of fixation of seniority. ”

6.3 It appears that the consideration of the Acting Chief Justice was, thus, that in the event the vacancies were not there, the re-evaluation may have the result of disturbing the appointments of certain private secretaries already made, whose marks are now lower than those of the appellants. Thus, it can be seen that it is not the appellants, who were to be adjusted against the additional vacancies but those candidates whose rank was lowered as a result of revision of marks of appellants and other similarly placed candidates. It is to be noted that in the administrative note, the Acting Chief Justice also specifically

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observed that the issue thereafter is required to be considered is the issue of how the seniority of these persons is to be fixed and whether any re-fixation is necessary. The matter was referred to the Special Committee on the aspect of fixation of seniority. That thereafter, the Special Committee initially took the decision to put the newly selected candidates at the bottom of the seniority. However, thereafter, on representations made by the appellants seeking benefit of the seniority on the basis of the revised marks, the Special Committee in meeting dated 01.10.2018 decided to accord notional seniority in accordance with revised marks to candidates. The same recommendations came to be approved by the Chief Justice. The decision of the Special Committee approved by the Chief Justice to accord the notional seniority in accordance with revised marks to candidates attained the finality. Accordingly, the revised merit list was prepared which was the subject matter before the High Court.

7. Having heard learned counsel appearing on behalf of the respective parties and considering the fact that the earlier decision of re-evaluation of 13 candidates attained the finality and thereafter, the marks of 13 candidates came to be increased, the Special Committee was absolutely justified in its decision dated 01.10.2018 to accord notional seniority as per the revised marks/merit list. At the relevant time, none of the selected candidates (22 candidates – respondents herein) applied for re-evaluation and even challenged the decision of the Special Committee to re-evaluate the marks of only 13 candidates. Having failed to challenge the earlier decision to have the re-evaluation of 13 candidates only and even having not applied for the re-evaluation at the relevant time though the exercise of re-evaluation was going on thereafter, it was not open for the respondents to make a grievance subsequently that the re-evaluation of the marks of 13 candidates cannot be at their disadvantage. Once on re-evaluation, the marks are increased the respective candidates whose marks are increased will have to be placed at appropriate place in the merit list. Non-grant of seniority based on revised marks, thus, would render the process of re-evaluation redundant. The candidates whose marks have been increased cannot be deprived of their position in the select list dated 30.01.2017 and on the correction of error, they were required to be given the benefit of notional seniority i.e., inter se seniority on the basis of merit. There was no fault on the part of the appellants. It was

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because of the wrong marking at the relevant time they were deprived of the appointments and they were not placed in the merit list and as such was required to be corrected on the revision of the marks on re-evaluation. Therefore, the Special Committee was absolutely justified in taking the decision dated 01.10.2018 to accord the notional seniority in accordance with the revised marks to candidates. The Division Bench of the High Court has materially erred in setting aside the conscious decision taken by the Special Committee to accord the notional seniority in accordance with the revised marks to candidates.

8. Now, so far as the decisions relied on behalf of the respondents referred to hereinabove, shall not be applicable to the facts of the case on hand. In the case of **K. Meghchandra Singh (supra)** the issue under consideration was that whether while deciding the inter se seniority between promotees and direct recruits, seniority to direct recruits can be granted from the date on which vacancy arose/date of initiation of recruitment. In the present, case the appointment of appellants w.e.f. 30.01.2017 has been upheld, which has not been challenged by the respondents. The grant of inter se seniority to appellants from 30.01.2017 is because the exercise of the re-evaluation was essentially a correction in the select list dated 30.01.2017.
9. In view of the above and for the reasons stated above, the present appeals are allowed. The impugned judgment(s) and order(s) passed by the High Court are hereby quashed and set aside. The decision of the Special Committee dated 01.10.2018 is hereby restored and it is observed and held that the respective appellants herein shall be entitled to the notional seniority w.e.f. 30.01.2017 in accordance with the revised marks on re-evaluation. Present appeals are accordingly allowed. No costs.

Headnotes prepared by: Ankit Gyan
(Assisted by: Abhishek Agnihotri
and Aarsh Choudhary, LCRAAs)

Result of the case: Appeals allowed.