

PETITIONER:

U.P. SECRETARIAT U.D.A. ASSOCIATION THROUGH ITS JOINT SECRETARY

Vs.

RESPONDENT:

STATE OF UTTAR PRADESH & ORS.

DATE OF JUDGMENT: 27/01/1997

BENCH:

K. RAMASWAMY, G.T. NANAVATI

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

This special leave petition has been filed against the order of the Division Bench of the Allahabad High Court, made on July 2, 1996 in Writ Petition No. 6200/93. When the direct recruits had filed the special leave petition, this Court by order dated November 20, 1996 dismissed the same. Shri Gopal Subramaniam, learned senior counsel for the petitioners, who are now promote U.D.C. in the U.P. Secretariat Service contends that the learned Judges have given their reasoning at pages 58 and 59 thus:

"from the aforesaid decisions of Hon'ble Supreme Court, it is evident that the initial appointment of the promoters on officiating basis were not in accordance with the Rules, 1942, rather it de hors the rules. Contention of the petitioner that the quota as envisaged in Rule 21 of Rules 1942, has broken down or collapsed simply for the reason that due to certain administrative difficulties neither the selection for direct recruit nor the selection by promotion against the vacancies took place in the selection years with effect from 1971 to 1978, and hence according to the decision of Hon'ble Supreme Court in O.P. Singh vs. Union of India [(1994) 4 SCC 450] and Direct Recruit Class II Officers' Case (supra), the petitioners (promotees) should not be pushed down before the appointees from the other sources inducted into the service one later date (proposition E of the Direct Recruit Class II case (supra), appears to be misconceived. Petitioners, were not

at all prejudiced because of non-selection during the for said period for the reasons that the direct recruitment also did not take place during the aforesaid period and that the petitioners in accordance with the seniority on the post of L.D.A. were given officiating promotion on the post of U.D.A. against the vacancies existing in their quota or otherwise. In view of the aforesaid position, it cannot be said that the quota rule, as envisaged, under rule 21 of Rules 1942 has collapsed down."

The above reasoning is not correct for the reason that during the relevant period neither direct recruitment nor promotions were made in accordance with the rules. As a consequence, since the promotees have been continuously officiating on the posts they are entitled to be put back to the date from which they have been continuously officiating on the ground that rule of quota has broken down. We find no force in the contention. From the judgment of the Constitution bench of this Court in Direct Recruit Class II Engineering Officers' Association vs. State of Maharashtra & Ors. [(1990) 2 SCC 715], it is now settled law that merely because temporary appointment or promotion came to be made, seniority cannot be counted from the date of officiation except when the appointment was made in accordance with rules. Though appointment is temporary, if it was made in accordance with rules and to a substantive vacancy, seniority will be counted from the date of temporary promotion. Necessarily, the quota and rota require to be maintained so as to give effect to the object envisaged under the Rules. Mere inaction cannot be made the ground to contend that quota rule was broken down. It is not in dispute that appointments have been made in officiating capacity against the vacancies reserved for direct recruitment though no recruitment had taken place. They are not according to Rules and within quota. The Division Bench, therefore, has rightly held that the direct recruit is to be treated from the date on which he actually joined the service, though vacancies did exist prior to that. As a consequence, the promotees are also required to be fitted into the service from the date when they are entitled to fitment in accordance with quota prescribed under the Rules. The Division Bench, therefore, has rightly defined to grant the relief to the petitioners.

The special leave petition is accordingly dismissed.