

CASE NO.:

Special Leave Petition (civil) 10653 of 1998

Special Leave Petition (civil) 12013 of 1998

Special Leave Petition (civil) 16740 of 1998

PETITIONER:

STATE OF BIHAR & ORS.

Vs.

RESPONDENT:

KAMESHWAR PRASAD SINGH & ANR.

DATE OF JUDGMENT: 27/04/2000

BENCH:

S. Saghir Ahmad, & R. P. Sethi.

JUDGMENT:

SETHI, J.

L...I...T.....T.....T.....T.....T.....T.....T...J

The respondents Brij Bihari Prasad Singh and Kameshwar Prasad Singh and one Ramjas Singh were directly recruited as Sub-Inspectors of Police on 2.1.1966. Brij Bihari Prasad Singh was promoted as Inspector of Police on officiating basis on 16.7.1971 with a clear stipulation that he will not get seniority in the rank of Inspector till selected by the IG's Board. Consequently he actually joined on 22.7.1971. Ramjas Singh was promoted as Inspector on 8.7.1972 in terms of Rule 616(c) of the Bihar Police Manual Rules (hereinafter referred to as "the Rules") as he had been awarded gallantry award. On 2.7.1978 Brij Bihari Prasad Singh was promoted as Inspector after selection under Rule 649 and was confirmed as such on 1.4.1982. The aforesaid respondent filed Writ petition No.6873 of 1990 in the High Court of Patna praying for direction to the respondents therein to consider his case for promotion to the post of Dy.SP treating his date of promotion to the post of Inspector of Police as 27.7.1971, the date when he joined as Inspector of Police consequent upon his initial promotion on officiating basis. The aforesaid writ petition was disposed of by the High Court on 30th November, 1990 directing Brij Bihari Prasad Singh to file representation and the petitioner-State to dispose of the same within three months. On 14.5.1991 the Director General of Police directed seniority of the aforesaid respondent in the rank of Inspector to be reckoned with effect from 27.7.1971. However, on 13.4.1993 the DGP modified the aforesaid order and directed confirmation of Brij Bihari Prasad Singh in the rank of Inspector with effect from 2.7.1978 when he was substantively promoted under Rule 649 of the Rules and placed him at Sl.No.86 Ka in the seniority list of Inspectors. Feeling aggrieved, the aforesaid respondent filed Writ Petition No.4108 of 1991 in the High Court which was allowed on 8.4.1994 with a direction of reckoning his seniority as Inspector with effect from 27.7.1971 and grant of all consequential benefits to him. As the directions were not complied with,

contempt petition being MGC No.1360 of 1994 was filed in the High Court and according to the petitioners the order of the High Court passed in Writ Petition No.4108/91 was implemented allegedly under the threat of contempt.

Ramjas Singh who was promoted as Inspector out of turn on the basis of gallantry award in terms of Rule 616(c) of the Rules had been promoted as Dy.SP with effect from 25th October, 1975. Alleging that the aforesaid Ramjas Singh was junior to him, the respondent Brij Bihari Prasad Singh filed writ petition No.697 of 1995 claiming promotion with effect from the date when Ramjas Singh was promoted as Dy.SP. The aforesaid writ petition was allowed on 26th July, 1995 directing promotion of Brij Bihari Prasad Singh as Dy.SP with effect from 25th October, 1975. The Letters Patent Appeal filed against the aforesaid judgment was dismissed by a Division Bench of the High Court on 22nd March, 1996 vide the judgment impugned in the SLP 12013/98.

There being delay of 679 days in filing the SLP, the appellants have also filed Application being IA No.1/98 seeking condonation of delay in filing the SLP. It is submitted in the application that the order of the Division Bench of the High Court could not be challenged earlier allegedly due to the fear of contempt and various coercive orders passed by the High Court against the State and its officials. It is contended that as consequent upon the judgment of the High Court in Brij Bihari Prasad Singh's case, a number of writ petitions have been filed in the High Court of Patna for the grant of similar benefits, the State had no option left except to approach this Court. It is contended that the judgment impugned has been passed in violation of the provisions of law and the rules applicable and it has become a havoc in the Department and Government is facing great trouble in compliance of such type of directions for conferment of uncalled for benefits. It is submitted that if the impugned judgment is not rectified or set aside, the interests of more than 250 officers would be adversely affected. By promoting Brij Bihari Prasad Singh a number of senior officers are stated to have already superseded for no fault of theirs. If promotions are given in terms of the directions of the High Court, the same is likely to upset the entire cadre of Dy.SP of Police as well as Inspectors of Police in the State of Bihar. If not stopped, the consequence would be uncalled for litigation with heavy financial burden upon the State.

Kameshwar Prasad Singh respondent in the SLP 10653 of 1998 filed a writ petition in the High Court praying for issuance of directions to the appellants to assign him seniority in the rank of Inspector of Police over Brij Bihari Prasad Singh and thereafter provide him with all consequential benefits. He claimed to have been appointed along with Brij Bihari Prasad Singh as Sub Inspector of Police in January, 1966. His name was shown above the name of Brij Bihari Prasad Singh in the cadre of Sub Inspectors. Both of them passed the PTC training together. He claimed that his case for substantive appointment of Sub Inspector was placed before the Director General of Police along with the cases of Brij Bihari Prasad Singh and others. The Selection Board which held its meetings on 17th and 18th August, 1978 is stated to have declared both the respondents as fit for officiating promotion on the higher post of Inspector of Police. On the basis of the recommendations made by the Board a Gazette Notification is stated to have

been issued on 6th October, 1978 by which both the aforesaid respondents were promoted on officiating basis to the higher post of Inspector of Police. However, despite notification Kameshwar Prasad Singh could not join the post of Inspector till 3rd March, 1981. Both the aforesaid respondents were stated to have been confirmed with effect from 1.4.1982. In the seniority list published on 18th May, 1988, the said Kameshwar Prasad Singh was shown senior to Brij Bihari Prasad Singh by being placed at Sl.No.224 and Brij Bihari Prasad Singh at Sl.No.225. He then referred to the filing of the writ petition by respondent Brij Bihari Prasad Singh to which he was not made a party. He claimed that after the promotion of Brij Bihari Prasad Singh he could not be denied the relief claimed. Allowing the writ petition on 3rd July, 1997, the learned Single Judge of the High Court directed the petitioners herein to treat the said respondent as senior to Brij Bihari Prasad Singh as Inspector of Police and provide him with all consequential benefits including promotion to the next higher post, if he otherwise was found fit. It was, however, made clear that the judgment of the Court would not affect the interest of Brij Bihari Prasad Singh in the matter of promotion to the post of Dy.SP and SP which was noticed to have been already granted to him. LPA filed against the judgment of the learned Single Judge was dismissed on the ground of unexplained delay of 174 days, vide the judgment impugned in this petition.

Indra Nand Mishra and others who were intervenors in the High Court filed an application with the submission that as they were likely to be adversely affected by the impugned judgment passed by the learned Single Judge and confirmed by the appellate Bench, their interests be protected and the court should ensure by giving the benefit to the writ petitioners that the interest of the intervenors would not be adversely affected. Their application was dismissed holding:

"However, those persons are neither party in the present Letters Patent Appeal nor they were party in the writ applications referred to above. Even if they have bonafide grievance, the same cannot be appreciated and considered in this Letters Patent Appeal."

They have also sought the condonation of delay mainly on the ground of not being aware of the judgment passed by the High Court which ultimately and eventually adversely affected their interests.

We have heard the arguments of the learned counsel
appearing for the parties and have perused the records.@@
JJ

Appearing for the petitioners Mr.P.P. Rao, Senior Advocate has submitted that under the circumstances of the case and for the reasons detailed in the applications sufficient grounds have been made out for condoning the delay in filing the petitions. He has further submitted that the judgments impugned are contrary to law and totally in violation of the rules applicable in the case and if not set right, are likely to adversely affect a number of other officials who are admittedly senior than the respondents herein. According to the learned counsel 14 similar writ petitions and three contempt petitions are pending before the High Court wherein all the petitioners have claimed

similar relief as was given to Brij Bihari Prasad Singh, on the ground of admittedly being senior to him. Besides 15 representations for similar reliefs are stated to be pending before the Government. Brij Bihari Prasad Singh is stated to have superseded 168 Inspectors by getting an order to give him seniority with effect from 27.7.1971. In the cadre of Dy.SP Brij Bihari Prasad Singh is stated to have superseded 407 officers by virtue of the judgment of the High Court in the second round claiming promotion as Dy.SP with effect from 25th October, 1975, when Ramjas Singh was promoted. It is contended that the High Court has committed an error of law by directing the conferment of benefits upon the respondent on the alleged ground of equality. No court can grant relief to a citizen by applying the concept of negative equality. Only because the Government had committed a mistake by giving Brij Bihari Prasad Singh seniority with effect from 27.7.1971 as Inspector and under the threat of contempt, promotion with effect from 25th October, 1975, the others who claimed to be similarly situated cannot force the Government to commit the same mistake and upon denial approach the High Court for issuance of appropriate directions.

Mr.P.S. Misra, Learned Senior Advocate appearing for the respondents has, however, submitted that as the State slept over its rights and felicitated the judgment in Brij Bihari Prasad Singh's case become final, they are now not entitled to seek the condonation of unexplained delay. It is further submitted that Brij Bihari Prasad Singh and Ramjas Singh have already been conferred the benefits of the judgment and consequently promoted. By setting aside the judgments at this belated stage would not only adversely affect their interests but subject the aforesaid respondents to humiliation of demotion besides suffering of the monetary loss. The learned senior counsel has even denied the claim of Mr.Rao regarding supersession of 168 Inspectors and 407 Dy.SPs. It is contended that in view of the settled law the present petitions are liable to be dismissed.

Mr.Vikas Singh and other advocates who appeared for the intervenors submitted that if the impugned judgments are not set aside, their clients along with others are likely to suffer for no fault of theirs. It is contended that in the absence of parties likely to be affected consequent upon the prayers made were necessary parties and in view of the fact that they have not been impleaded as party-respondents, the impugned judgments cannot adversely affect the interests of any senior officer.

Power to condone the delay in approaching the court has been conferred upon the courts to enable them to do substantial justice to parties by disposing of matters on merits. This Court in Collector, Land Acquisition, Anantnag & Anr. vs. Mst.Katiji & Ors.[1987 (2) SCR 387] held that the expression 'sufficient cause' employed by the legislature in the Limitation Act is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice - that being the life purpose for the existence of the institution of courts. It was further observed that a liberal approach is adopted on principle as it is realised that:

"1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.

3. 'Every day's delay must be explained' does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.

4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non- deliberate delay.

5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so."

After referring to the various judgments reported in New India Insurance Co. Ltd.v. Shanti Misra[1975 (2) SCC 840], Brij Inder Singh v. Kanshi Ram [AIR 1917 PC 156], Shakuntala Devi Jain v. Kuntal Kumari [1969 (1) SCR 1006], Concord of India Insurance Co. Ltd. v. Nirmala Devi [1979 (4) SCC 365], Lala Mata Din v. A. Narayanan [1969 (2) SCC 770], State of Kerala v. E.K. Kuriyipe [1981 Supp SCC 72], Milavi Devi v. Dina Nath[1982 (3) SCC 366 O.p. Kathpalia v. Lakhmir Singh [1984 (4) SCC 66], Collector, Land Acquisitionv. Katiji [1987 (2) SCC 107], Prabha v. Ram Parkash Kalra [1987 Supp. SCC 339], G.Ramegowda, Major v. Spl.Land Acquisition Officer [1988 (2) SCC 142], Scheduled Caste Coop. Land Owning Society Ltd. v. Union of India[1991 (1) SCC 174], Binod Bihar Singh v. Union of India [1993 (1) SCC 572], Shakambari & Co. v. Union of India[1993 Supp (1) SCC 487], Ram Kishan v. U.P. SRTC[1994 Supp (2) SCC 507] and Warlu v. Gangotribai [1995 Supp (1) SCC 37; this Court in State of Haryana v. Chandra Mani & Ors. [1996 (3) SCC 132] held:

"It is notorious and common knowledge that delay in more than 60 per cent of the cases filed in this Court - be it by private party or the State - are barred by limitation and this Court generally adopts liberal approach in condonation of delay finding somewhat sufficient cause to decide the appeal on merits. It is equally common knowledge that litigants including the State are accorded the same treatment and the law is administered in an even-handed manner. When the State is an applicant, praying for condonation of delay, it is common knowledge that on account of impersonal machinery and the inherited bureaucratic methodology imbued with the note-making, file pushing, and

passing-on-the buck ethos, delay on the part of the State is less difficult to understand though more difficult to approve, but the State represents collective cause of the community. It is axiomatic that decisions are taken by officers/agencies proverbially at slow pace and encumbered process of pushing the files from table to table and keeping it on table for considerable time causing delay - intentional or otherwise - is a routine. Considerable delay of procedural red-tape in the process of their making decision is a common feature. Therefore, certain amount of altitude is not impermissible. If the appeals brought by the State are lost for such default no person is individually affected but what in the ultimate analysis suffers, is public interest. The expression 'sufficient cause' should, therefore, be considered with pragmatism in justice-oriented process approach rather than the technical detention of sufficient case for explaining every day's delay. The factors which are peculiar to and characteristic of the functioning of pragmatic approach in justice oriented process. The court should decide the matters on merits unless the case is hopelessly without merit. No separate standards to determine the cause laid by the State vis-À-vis private litigant could be said to prove strict standards of sufficient cause. The Government at appropriate level should constitute legal cells to examine the cases whether any legal principles are involved for decision by the courts or whether cases require adjustment and should authorise the officers to take a decision to give appropriate permission for settlement. In the event of decision to file the appeal needed prompt action should be pursued by the officer responsible to file the appeal and he should be made personally responsible for lapses, if any. Equally, the State cannot be put on the same footing as an individual. The individual would always be quick in taking the decision whether he would pursue the remedy by way of an appeal or application since he is a person legally injured while State is an impersonal machinery working through its officers or servants."

To the same effect is the judgment of this Court in Special Tehsildar, Land Acquisition, Kerala v. K.V. Ayisumma [1996 (10) SCC 634].

In Nand Kishore v. State of Punjab [1995 (6) SCC 614] this Court under the peculiar circumstances of the case@ JJ condoned the delay in approaching this Court of about 31@ JJJJJJJJJJJJJJJJJJJJJJJ years. In N. Balakrishnan v. M.Krishnamurthy [1998 (7) SCC 123] this Court held that the purpose of Limitation Act was not to destroy the rights. It is founded on public policy fixing a life span for the legal remedy for the general welfare. The primary function of a Court is to adjudicate disputes between the parties and to advance substantial justice. The time limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause. The object of providing legal remedy is to repair the damage caused by reason of legal injury. If the explanation given does not smack malafides or is not shown to have been put forth as a part of dilatory strategy, the court must show utmost consideration to the suitor. In this context it was observed:

"It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court."

[illegible]

that sufficient cause has been made out by the petitioners which has persuaded us to condone the delay in filing the petitions. Dismissing the appeals on technical grounds of limitation would not, in any way, advance the interests of justice but admittedly, result in failure of justice as the impugned judgments are likely to affect not only the parties before us, but hundreds of other persons who are stated to be senior than the respondents. The technicalities of law cannot prevent us from doing substantial justice and undoing the illegalities perpetuated on the basis of the impugned judgments. However, while deciding the petitions, the reliefs in the case can appropriately be moulded which may not amount to unsettle the settled rights of the parties on the basis of judicial pronouncements made by the courts regarding which the State is shown to have been careless and negligent. It is paramount consideration of this Court to safeguard the interests of all the litigants and persons serving the Police Department of the State of Bihar by ensuring the security of the tenure and non disturbance of accrual of rights upon them under the prevalent law and the rules made in that behalf. Accordingly delay in filing the petitions is condoned.

Leave granted.

The facts as noticed earlier are not seriously disputed. The respondent Brij Bihari Prasad Singh had filed Writ Petition No.1556/90 praying therein that he be given the same benefit as was given to the writ petitioners in Writ Petition No.563 of 1985. He contended that similar benefits had been conferred upon many police officers and he had allegedly been discriminated. The writ petition was dismissed as withdrawn on 31st July, 1990 with the observation that "however, this shall not prejudice the petitioners in pursuing a remedy, if any, available to him or pursuing his representation which we are informed is pending with the State". As his representation dated 4.6.1988 had not been considered, Brij Bihari Prasad Singh filed writ petition No.6873 of 1990 in which he prayed:

"Under the above facts and circumstances it is, therefore, prayed that your lordships be graciously pleased to admit this application issue rule NISI and after both parties and there show causes if any allow this application by issuing a writ of directing the respondents to give promotion and other consequential benefits to the petitioner from the post of Inspector of Police to the post of Deputy Superintendent of Police from the date the petitioner is found in legal entitle considering the case for promotion to the post of Deputy Superintendent of Police by treating as confirmed Inspector of Police with effect from 27.7.71 i.e. the date of continuous officiation in the rank of Inspector of Police in the event of judgments and order passed by this Hon'ble Court relying on judgment of the Supreme Court contained in Annexure 1, 2 and 3 of this writ application or pass such other order or orders as to your lordships may be pleased fit and proper."

As the Director General modified his order dated 14th May, 1991 vide his subsequent order dated 13.4.1993, Brij Bihari Prasad Singh filed Writ Petition No.4108 of 1994 wherein he alleged that his seniority had not been fixed correctly in the rank of Inspectors. A learned Single Judge of the High Court vide his interim order directed appellants herein to issue a regular order of promotion and if so advised to determine the seniority of the writ petitioners in the cadre of Dy.SP of Police. It examined the legality of the order of the Director General of Police dated 13.4.1993 and held:

"The petitioner's seniority once determined in the rank of Inspector with effect from 27.7.1971 cannot be legally altered without notice nor is any justification for the alteration pointed out by the learned State counsel.

Therefore, his seniority in the rank of Inspector has to be reckoned with effect from 27.7.1971. The date of confirmation, in these circumstances, would, therefore, not to relevant for determining the seniority of the petitioner in the rank Inspector, and is necessary, his confirmation on the post of Inspector would have to as made afresh treating the petitioner to have been placed on probation in the rank of Inspector from 27.7.1971. Further consequential revisions, if necessary, shall also be made in the gradation list of the Deputy Superintendent of Police where the petitioner has been placed at Serial Number 399."

The impugned order was quashed and a direction issued to the appellant to reckon the seniority of the writ petitioners in the rank of Inspectors with effect from 27.7.1971 with all consequential benefits as a result of revision of his seniority in the rank of Inspector as well as that of Dy.SP of Police. Admittedly, this order was not appealed against and ultimately implemented by the authorities of the appellant- State. By order dated 1st October, 1994 the respondent Brij Bihari Prasad Singh was held entitled for promotion to the post of Dy.SP with effect from 11th July, 1981 and not with effect from 25th October, 1975. He again filed writ petition No.697 of 1995 submitting therein that having been confirmed to the lower post of Inspector of Police from 1st March, 1975 his seniority should be counted from the date of confirmation

i.e. 25th October, 1975. It was noticed that Ramjas Singh who was allegedly junior to him had been promoted to the post of Inspector with effect from 8th July, 1972. Brij Bihari Prasad Singh claimed to be senior to said Ramjas Singh on the ground of having been promoted as Inspector on officiating basis on 27.7.1971. The learned Single Judge held:

"Having heard the parties, my considered view is that the impugned order dated 1st October, 1994 is completely illegal. The same is against the order and direction of this Court dt.8th April, 1994, passed in CWJC No.4108/91, wherein this court categorically held and directed the respondents to provide the petitioner with the seniority in the rank of Inspector of Police with effect from 27th July, 1971. By the impugned order, as contained in annexure-12, the respondents cannot superseded and/or alter the aforesaid finding of this Court, in fact, Annexure-12 is contemptuous.

Apart from the aforesaid fact, numerous decisions, including the decision given by the Supreme Court, as reported in AIR 1977 SC 2051, it has been held that the seniority of a person cannot be dependent on confirmation, if confirmation itself is fortuitous in nature. In the present case I have taken into note that confirmation of the petitioner and Sh. Ramjas Singh to the post of Inspector of Police itself was fortuitous in nature, the same having not been made on the assessment of merit. Such being the position, the impugned order dated 1st October, 1994 cannot be sustained in the eye of law."

The order dated 1st October, 1994 in so far as it related to the writ petitioner was set aside with a direction to the authorities of the appellant-State to consider the case of the writ petitioner for promotion to the post of Dy.SP with effect from 25th October, 1975 i.e. the date when his alleged junior Shri Ramjas Singh was promoted. It was further directed that in case the writ petitioner was found fit for promotion with effect from 25th October, 1975 he would shift back the date of promotion to the post of Dy.SP from 11th July, 1971 to 25th October, 1971. The appellants were further directed to provide all consequential benefits to the petitioners.

Rule 649 deals with the promotion of Sub Inspectors to Inspectors and Reserve Sub-Inspectors to Reserve Inspections and provides:

"649. Inspectors and Reserve Inspectors-- (a) The promotion of Sub-Inspectors to Inspectors, and Reserve Sub-Inspectors to Reserve Inspectors will be made by the Inspector-General on the advice of the Inspector General's Selection Board [Appendix 72(1)] (For period of probation, See Rule 668).

(b) In July the Deputy Inspector-General will call for nominations for promotion to reach him on the date fixed. The form of nomination and the list of enclosures are given in P.M. Form No.102.

(c) At least 14 days before nominations are sent to the Deputy Inspector General the names of the nominees shall be published by the nominating authority in district orders so that those who are not nominated may have an opportunity of

representing their cases before the nominations are actually submitted. Officers, having such representation to make, should be given interviews and their cases examined with them.

In case their representations are rejected, those who have been superseded may file representation before Deputy Inspector General. Such representation shall be submitted within 14 days of receipt of information and this shall be forwarded soon to Deputy Inspector General, so that additional nominations may be sent on the orders of Deputy Inspector General.

In forwarding the nominations a certificate must be given of the dates on which the lists were published and intimations sent to those not nominated. In selecting Sub-Inspectors and Reserve Sub Inspectors for promotion, preference should be given to those who have received special commendation for integrity of character and good defective work.

(d) The Range Selection Board [Appendix 72(3)] shall scrutinize the district nominations and shall select from among them in order of merit those whose nominations are to be sent before the Inspector-General's Selection Board [Appendix 72(1)] on a date to be fixed by the Inspector-General.

(e) The Inspector-General's Selection Board [Appendix 72(1)] shall scrutinize the nominations of the Range Selection Board and compile a list of selections which should ordinarily be in order of seniority for promotion as vacancies occur. If an officer is placed higher in the list than his seniority warrants a full note giving reason shall be recorded. This list shall be of as many Sub-Inspectors as there are vacancies plus few anticipatory vacancies depending on averages of last few years. Promotions by the Inspector-General under clause (a) shall be confined to this list but if any one does not get appointed from the list, his case shall be reviewed again at the time of preparation of the next year's list and if found fit, he shall be placed above the selected nominees of that year."

The respondent Brij Bihari Prasad Singh is stated to have been promoted as Inspector in terms of the said Rule on@@ JJ
2nd July, 1978. Rule 660(c) deals with the out of turn@@ JJJJJJJJJJJJJJJJ promotions and reads: "Selection Boards may recommend out of turn promotion of officers with outstanding records of service and competent authorities may order such promotion in deserving cases as they deem fit and proper with the approval of next higher authority.

Officers so promoted should be placed below the officers of the approved existing list of respective rank prepared by Selection Boards and be confirmed against substantive vacancies as and when vacancies arise in the order of the list.

Criteria taken together for determining outstanding records of service will be as follows:

i) Award of President's Police Medal and Indian Police

Medal, for gallantry and distinguished service.

ii) Should not have been awarded any major punishment till the date of consideration and order of out of turn promotion.

iii) Very good entries in permanent Character Roll.

iv) Citation regarding high standard of investigation, detection and control of crime and intelligence work.

v) Should have ability for shouldering higher responsibilities consonant with the proposed promotion [See Home (Police) Department Notification No.GSR 34, dated 12th May, 1976].

Ramjas Singh was promoted under the aforesaid rule on 8.7.1972. The respondent Brij Bihari Prasad Singh prayed his promotion to be made effective from 27th July, 1971 when he joined as Inspector consequent upon his promotion on officiating basis. The order of his promotion read as:

"Following Sub-Inspectors are promoted to officiate as Inspector w.e.f. the date they join their place of posting noted against each. They will not get the advantage of the previous contained in GOM VII/1966 towards their seniority in the rank of Inspector till they are finally selected by I.G.'s Board.

Sri Bijay Kumar Singh - P.S. Motihari as usual he will function as Cr.O for Sadar Sub-division....." This Court in State of West Bengal & Ors. v. Aghore Nath Dey and Ors., etc. [1993 (2) SCR 919] held that to enable seniority to be counted from the date of initial appointment and not according to the date of promotion, the incumbent of the post has to be initially appointed "according to the rules". Where the initial appointment is only adhoc and not according to the rules and made as a stop gap arrangements, the officiation on such post cannot be taken into account for considering the seniority. In that case the Court relied upon the judgment of the Constitution Bench in Direct Recruit Class II Engineering Officers Association and Ors. v. State of Maharashtra & Ors. [1990 (2) SCR 900] wherein it was held that:

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

The corollary of the above rule is that where the initial appointment is only adhoc and not according to rules and made as a stop gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted.

(C) When appointments are made from more than one source, it is permissible to fix the ratio for recruitment from the different sources, and if rules are framed in this

regard they must ordinarily be followed strictly.

(D) If it becomes impossible to adhere to the existing quota rule, it should be substituted by an appropriate rule to meet the needs of the situation. In case, however, the quota rule is not followed continuously for a number of years because it was impossible to do so the inference is irresistible that the quota rule had broken down.

(E) Where the quota rule has broken down and the appointments are made from one source in excess of the quota, but are made after following the procedure prescribed by the rules for the appointment, the appointees should not be pushed down below the appointees from the other source inducted in the service at a later date.

(F) Where the rule permits the authorities to relax the provisions relating to the quota, ordinarily a presumption should be raised that there was such relaxation when there is a deviation from the quota rule.

(G) The quota for recruitment from the different sources may be prescribed by executive instructions, if the rules are silent on the subject.

(H) If the quota rule is prescribed by an executive instruction, and is not followed continuously for a number of years, the inference is that the executive instruction has ceased to remain operative.

(I) The posts held by the permanent Deputy Engineers as well as the officiating Deputy Engineers under the State of Maharashtra belonged to the single cadre of Deputy Engineers.

(J) The decision dealing with important questions concerning a particular service given after careful consideration should be respected rather than scrutinised for finding out any possible error. It is not in the interest of service to unsettle a settled position."

It is thus evident that Brij Bihari Prasad Singh having been promoted on officiating basis with a clear stipulation that he will not get seniority in the rank of Inspector till finally selected could not have preferred a claim regarding his seniority on the basis of promotion of Ramjas Singh, though initially junior to him yet substantively promoted in accordance with Rule 660C on 8.7.1972 whereas Brij Bihari Prasad Singh was promoted after selection under Rule 649 in 1978. The High Court totally ignored the basic principles governing the service rules and the mandate of law. There was, therefore, no justification of issuing the directions to direct the promotion of Brij Bihari Prasad Singh while deciding the writ petition No.697 of 1995 and dismissing the LPA No.1018/95 vide the judgment impugned in this appeal filed against Brij Bihari Prasad Singh.

It appears that the High Court totally lost sight of the fact that in his petitions filed from time to time Brij Bihari Prasad Singh had not impleaded any of his seniors as party-respondents. In the absence of persons likely to be affected by the relief prayed for, the writ petitions should

have normally been dismissed unless there existed specific reasons for non implementation of the affected persons. Neither any reason was assigned by the writ petitioner nor the court felt it necessary to deal with this aspect of the matter. Ignoring such a basic principle of law has resulted in the supersession of 168 Inspectors and 407 Dy.SPs. The writ petition filed by Brij Bihari Prasad Singh being totally misconceived, devoid of any legal force and prayers made being in contravention of the rules applicable in the case deserved dismissal, which was unfortunately not done with the result that the interests of many seniors have been threatened, endangered and adversely affected. The appeal of the State has, therefore, to be allowed by setting aside the impugned judgment.

Kameshwar Prasad Singh respondent in his petition has preferred his claim of promotion on the ground of promotion@@
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 of his junior Brij Bihari Prasad Singh who was impleaded as@@
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 respondent No.6. He had specifically submitted:

"That from the facts, law and circumstances stated above it is clear that the petitioner was at all material times senior to the respondent No.6 and the respondent No.6 illegally scored a march over him therefore on the principles of recognised service jurisprudence on next below rule, the petitioner should be assigned seniority from 27.7.71 and be confirmed with effect from 2.7.78 and the petitioner be put just above the respondent no.6 in the seniority list of Inspector of Police."

He had prayed that:

"For issuance of appropriate writ, order or direction to direct the official respondents to assign seniority in the rank of Inspector just above the respondent No.6 and to confirm on the post of Inspector with effect from 2.7.78 when his junior respondent no.6 has been confirmed and for grant of all consequential benefits." The writ petition was disposed of holding Kameshwar Prasad Singh as senior to Brij Bihari Prasad Singh as Sub Inspector of Police having been confirmed as Inspector on 1.4.1982 with observation: "Subsequently, whatever the advantage, the respondent No.6 has derived in pursuance of different orders of this Court, including the orders/judgments passed in CWJC No.6873/90; 4108/91 and 6975/95, were so obtained by him without impleading the petitioner as part-respondent therein.

In this background, while I do not doubt the decisions given by this Court in different cases of respondent No.6, Brij Bihari Prasad and while I do not doubt the consequential orders which have been issued by the respondents on the basis, I hold that the petitioner cannot suffer for the same and he is entitled for seniority over the respondent No.6 as Inspector of Police, though not promoted, while the Respondent No.6 was granted officiating promotion by way of stop gap arrangement on 27th July, 1971.

Accordingly, the respondents are directed to treat the petitioner as senior to the respondent No.6 as Inspector of Police and provide him with the consequential benefit of the same, including promotion to the next higher post, if the petitioner is found fit for the same."

The appeal filed against this judgment was dismissed on the ground of delay and without consideration of the pleas raised on facts. The concept of equality as envisaged under Article 14 of the Constitution is a positive concept which cannot be enforced in a negative manner. When any authority is shown to have committed any illegality or irregularity in favour of any individual or group of individuals other cannot claim the same illegality or irregularity on ground of denial thereof to them. Similarly wrong judgment passed in favour of one individual does not entitle others to claim similar benefits. In this regard this Court in Gursharan Singh & Ors. v. NDMC & Ors. [1996 (2) SCC 459] held that citizens have assumed wrong notions regarding the scope of Article 14 of the Constitution which guarantees equality before law to all citizens. Benefits extended to some persons in an irregular or illegal manner cannot be claimed by a citizen on the plea of equality as enshrined in Article 14 of the Constitution by way of writ petition filed in the High Court. The Court observed:

"Neither Article 14 of the Constitution conceives within the equality clause this concept nor Article 226 empowers the High Court to enforce such claim of equality before law. If such claims are enforced, it shall amount to directing to continue and perpetuate an illegal procedure or an illegal order for extending similar benefits to others. Before a claim based on equality clause is upheld, it must be established by the petitioner that his claim being just and legal, has been denied to him, while it has been extended to others and in this process there has been a discrimination."

Again in Secretary, Jaipur Development Authority, Jaipur v. Daulat Mal Jain & Ors. [1997 (1) SCC 35] this Court considered the scope of Article 14 of the Constitution and reiterated its earlier position regarding the concept of equality holding:

"Suffice it to hold that the illegal allotment founded upon ultra vires and illegal policy of allotment made to some other persons wrongly, would not form a legal premise to ensure it to the respondent or to repeat or perpetuate such illegal order, nor could it be legalised. In other words, judicial process cannot be abused to perpetuate the illegalities. Thus considered, we hold that the High Court was clearly in error in directing the appellants to allot the land to the respondents."

In State of Haryana & Ors v. Ram Kumar Mann [1997 (3) SCC 321] this Court observed:

"The doctrine of discrimination is founded upon existence of an enforceable right. He was discriminated and denied equality as some similarly situated persons had been given the same relief. Article 14 would apply only when invidious discrimination is meted out to equals and similarly circumstanced without any rational basis or relationship in that behalf. The respondent has no right, whatsoever and cannot be given the relief wrongly given to them, i.e., benefit of withdrawal of resignation. The High Court was wholly wrong in reaching the conclusion that there was invidious discrimination. If we cannot allow a wrong to perpetrate, an employee, after committing mis-appropriation

of money, is dismissed from service and subsequently that order is withdrawn and he is reinstated into the service. Can a similarly circumstanced person claim equality under Section 14 for reinstatement? The answer is obviously "No". In a converse case, in the first instance, one may be wrong but the wrong order cannot be the foundation for claiming equality for enforcement of the same order. As stated earlier, his right must be founded upon enforceable right to entitle him to the equality treatment for enforcement thereof. A wrong decision by the Government does not give a right to enforce the wrong order and claim parity or equality. Two wrongs can never make a right."

In view of our finding that the judgment of the High Court in the case of Brij Bihari Prasad Singh being contrary to law was not sustainable and liable to be dismissed, the impugned judgment in the case of Kameshwar Prasad Singh's case cannot be upheld. The aforesaid respondent is, therefore, not entitled to any relief as prayed for by him on the analogy of the judgments passed and directions given in Brij Bihari Prasad Singh's case.

We do not agree with the submissions of the respondents that the question of law raised by the appellants in regard to determination of seniority could not be permitted to be raised as allegedly the said point had not been pleaded before the High Court and is altogether a new point taken for the first time in this Court. As noticed earlier, the High Court had dismissed the LPAs only on the ground of limitation without deciding the other pleas raised by the appellants. A perusal of LPA No.1018 of 1995 (Annexure P-6) shows that in para 9 the appellants State had submitted that the Home Secretary of the State had filed a counter affidavit in the writ petition No.697 of 1995 stating therein:

"...it is not correct to say that the petitioner (respondent in this appeal) is validly entitled to be promoted to the rank of Deputy Superintendent of Police from earlier date when junior to him namely Ramjas Singh joined as inspector on 8.7.1972 has been promoted to the rank of Deputy Superintendent of Police. The promotion of the petitioner in the rank of Inspector is different from Ramjas Singh. The petitioner was promoted to the rank of Inspector on adhoc basis with effect from 27.7.71 and has been confirmed with effect from 1.3.1975 on availability of permanent vacancy alongwith those Inspectors who were officiated on or before 27.7.1971, whereas Ramjas Singh was promoted in the rank of Inspector out of turn on 8.7.1972 on probation on the basis of Presidents Police Medal from gallantry. After expiry of probation of two years he (Ramjas Singh) had been confirmed with effect from 8.7.1974 and promoted to the rank of Deputy Superintendent of Police, with effect from 25.10.1975, alongwith others. As such petitioner is not validly entitled for promotion to the rank of Deputy Superintendent of police from the earlier date when Sri Ramjas Singh was promoted to the rank of Deputy Superintendent of Police with effect from 25.10.1975."

In the memo of appeal, the appellant herein submitted that the promotion case of the respondent was different from

that of Ramjas Singh. It was pleaded:

"....The petitioner was promoted to the rank of Inspector on adhoc basis with effect from 27.7.1971 and later on he was given officiating promotion from that very date, i.e. 27.7.1971 and was confirmed with effect from 1.3.1975 on the availability of permanent vacancy alongwith those Inspectors, who were officiating on or before 27.7.1971 and promoted to the rank of Deputy Superintendent of Police with effect from 11.7.1981 according to seniority. As stated earlier Sri Ramjas Singh was promoted out of turn in the rank of Inspector on 8.7.1972 on the basis of gallantry award by the Govt. and the period of probation was treated by the government from 8.7.1972 itself. After expiry of probation of two years he was confirmed with effect from 8.7.1974 and promoted in the rank of Deputy Superintendent of Police from 25.10.1975. It was an exceptional case. This is not followed in general officiating officers are confirmed on availability of permanent vacancy and not put on probation from the date of officiation. If this respondent is put on probation with effect from 27.7.1971 i.e. from the date of officiation so many police officers will be superseded."

The State also submitted that the learned Single Judge of the High Court had committed a mistake of law by not considering all aspects of the matter before allowing the writ petition on 26th July, 1975 which required to be interfered with by the Division Bench of the High Court in the LPA. When specific plea regarding facts and law had been raised in the LPA, the arguments of the respondents cannot be accepted that such a plea had been raised by the appellant for the first time in this Court. It is further contended that as the respondent was, in the meantime, appointed/promoted in the IPS Cadre and as per requirements of the State Government he has already submitted his resignation from the State Service, the acceptance of the appeal and setting aside the directions of the High Court would result in great hardship to him and amount to unsettling his settled service rights particularly when his promotion/appointment to the IPS cadre has not been challenged and is not in dispute. Such a plea by itself cannot be accepted as a ground to dismiss the appeal filed against an order which we have held to be illegal being contrary to law and the Service Rules applicable in the case. Once the judgment is set aside, the consequences have to follow and a person taking advantage or benefit of the wrong orders is to suffer for his own faults which cannot be attributed to anybody-else. However, in appropriate cases this Court can mould the relief to safeguard the interests of a person wherever required. For doing complete justice between the parties, appropriate directions can be given to protect the interests of a person who is found to have been conferred the benefits on the basis of judicial pronouncements made in his favour. As the appellant-State has been found to be careless and negligent in defending its cases, we feel and are inclined to protect the interests of Brij Bihari Prasad Singh, respondent. We are convinced that the interests of justice would be served by holding that despite setting aside the judgments of the High Court his interests be protected by not disturbing his promotions made from time to time. However, judgments passed in his favour cannot be permitted to be made a basis for conferment of similar rights upon other persons who are shown to have filed writ petitions or representations which, if accepted,

are likely to adversely affect the interests of more than 150 Inspectors and 400 Officers in the rank of Dy.SP. Similarly, if any benefit has been conferred upon any other person who has superannuated, no useful purpose would be served by directing his demotion retrospectively and recovery of the excess emoluments paid to him. Under the circumstances, the appeals are allowed/disposed of with the@@

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directions that: (1) Judgments of the learned Single Judge@@
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and of the LPA Bench passed in the case of Brij Bihari Prasad Singh impugned in Civil Appeal arising out of SLP (C) No.12013 of 1998 are set aside. (2) Similarly the judgments passed in Kameshwar Prasad Singh's case by the Single Judge and the LPA Bench which are impugned in this appeal arising out of SLP (C) NO.10653/98 are also set aside. (3) In view of setting aside the judgments in both the appeals mentioned above no orders are required to be passed in Civil Appeal arising out of SLP (C) NO.16740/98. (4) It is, however, made clear that despite setting aside of the impugned judgments the service benefits conferred upon Brij Bihari Prasad Singh consequent upon the judgments of the High Court shall not be withdrawn and his appointment/promotion in the IPS cadre not disturbed. (5) Consequent upon this judgment the appellant-State shall also not take any action against a person conferred with similar benefits as were conferred upon Brij Bihari Prasad Singh if that person has retired and is no more in service. Parties to bear their own costs.