CASE NO.:
Writ Petition (civil) 611 of 1992
Appeal (civil) 791 of 1993

PETITIONER:
Prafulla Kumar Das and Ors.
Pradip Chandra Parija and Ors.

RESPONDENT:
State of Orissa and Ors.
Pramod Chandra Patnaik & Ors.

DATE OF JUDGMENT: 07/10/2003

BENCH:
CJI., R.C. LAHOTI, B.N. AGRAWAL, S.B. SINHA & DR. A.R. LAKSHMANAN.

JUDGMENT:
J U D G M E N T

V.N. KHARE, C.J.I.

Validity of Section 2 of the Orissa Administrative Service, Class - II (Appointment of Officers Validation) Amendment Act, 1992 (hereinafter referred to as 'the Act') is in question in this writ petition and appeal. The appeal arises out of a judgment and order dated 23.4.1991 passed by the Orissa Administrative Tribunal at Bhubaneswar in Transferred Application No.402 of 1986. In the said application, the appellants herein, inter alia, prayed for a direction upon Respondent Nos.1 to 3 to fix their seniority by placing them above the private respondents and grant consequential career benefits to them. In the writ petition also, the petitioners have prayed for quashing of the Orissa Administrative Service Class II (Appointment of Officers Validation) Amendment Ordinance, 1992, which is subsequently replaced by the Act, as also for a declaration that the said Ordinance (Act) is inapplicable in the case of the petitioners and in any event the same cannot be applied retrospectively.

The basic dispute between the parties revolves round the concept of year of allotment as envisaged in the Act. The question came up for consideration before the Full Bench of the Orissa High Court in Ananta Kumar Bose vs. State of Orissa [AIR 1986 Orissa 151] wherein the principle of year of allotment, as also its application in relation to the parties thereto was upheld. The said decision of the Orissa High Court came up for consideration in Nityananda Kar vs. State of Orissa [(1990) Supp. 2 SCR 644] and a three-Judge Bench affirmed the views taken by the Orissa High Court.

By virtue of Section 2, the Orissa Administrative Service, Class-II (Appointment of Officers Validation) Act, 1987 ("Validation Act"), is sought to be amended such that certain direct recruits of the Orissa Administrative Service for the year 1973, who were, however, appointed in 1975, are accorded a relative seniority with respect to those merger recruits who were born in the said service by virtue of the prior merger of their parent cadre, the Orissa Subordinate Administrative Service ("O.S.A.S.") with the O.A.S., Class-II ("O.A.S. II") on December 21, 1973.

The petitioners in the writ petition as well as the appellants in civil appeal were members of the Orissa Subordinate Service Class III, which was designated as Orissa Administrative Service (Junior Branch) following its proposed and partial merger, on January 7, 1972, with the Orissa Administrative Service II, which, in turn, came to be known as Orissa Administrative Service (Senior Branch). The complete and final merger of these branches by virtue of the governmental resolution in this behalf, dated December 21, 1973, resulted in the creation of a single integrated Orissa

Administrative Service Class II. The Deputy Collectors, as the members of the erstwhile Senior Branch were known, and the Sub-Deputy Collectors of the Junior Branch, were consequently conferred inter se seniority in the integrated service such that the first name of the defunct Junior Branch would be placed immediately below the last name of the Senior Branch.

It is an admitted fact that the established practice of the State of Orissa as to the appointment, and allocation of seniority, of its officers has been to follow the principle of "year of allotment," whereby the date of appointment of an officer for the purposes of promotion and consequential seniority is regarded not as the date of actual appointment, but as the year in respect of which the vacancy was originally proposed to be filled.

In consonance with the stated practice, the respondent officials, in the present instance, were given 1973 as their year of allotment, although in actual point of time they took up service on varying dates in the year 1975. The petitioners and appellants, being mergerists who were born in the integrated service on the date of merger, that is December 21, 1973, were thereby denied seniority with respect to the direct recruits, by virtue of the principle of year of allotment.

The concept of year of allotment, in the particular context of the 1973 Merger, was first assailed before the Orissa High Court with respect to those direct recruits who were conferred 1970 and 1971 as their respective years of allotment, although they in material point of time were born in the service by virtue of their actual appointment on a subsequent date. The High Court in Ananta Kumar Bose (supra) , refuted the challenge and upheld the principle of year of allotment as a binding rule, given sanctity through long years of settled practice, and justified in terms of the various rules and regulations incorporating the same. The petition for special leave to appeal from the judgment of the Orissa High Court was then dismissed in limine by the Supreme Court.

The decision of the High Court of Orissa in Ananta Kumar Bose (supra) would subsequently find favour in similar circumstances that came before a three-Judge Bench of this Court in the case of Nityananda Kar (supra) . So as to give practical effect to certain observations and directions made by the High Court in Ananta Kumar Bose (supra), the Legislature of the State of Orissa enacted the Orissa Administrative Service, Class \026 II (Appointment of Officers Validation) Act, 1987. This Act was once more the subject of challenge before the High Court of Orissa, but having regard to the Full Bench decision in Ananta Kumar Bose (supra), the High Court dismissed the case of the petitioners before it. The Supreme Court, on appeal as well as in the three writ petitions heard together in Nityananda Kar (supra), was of the considered opinion that the decision of the Orissa High Court in Ananta Kumar Bose (supra) was the correct and binding law. This Court, placing further reliance upon its own decision in Direct Recruit Class II Engineering Officers' Association v. State of Maharashtra [(1990) 2 SCC 715], took the view that the sanctity of a well-established rule must not be unsettled, and the principle of year of allotment was as well justified in terms of the decision of the High Court in Ananta Kumar Bose (supra). The Court, whilst dismissing the appeal, however partly allowed the petition filed by one of the direct recruits, and struck down that portion of the 1987 Validation Act, which effected a differentiation between those direct recruits whose year of allotment was 1970 or 1971, on the one hand, and others whose year of allotment was 1972.
In terms of the decision of this Court in Nityananda Kar (supra), the direct recruits with 1972 as their year of allotment would equally be entitled to be placed in the gradation list at positions of seniority relative to the mergerists, who were previously Sub-Deputy Collectors and then members of the O.A.S. (Junior Branch). The Supreme Court in Nityananda Kar (supra) clarified that those direct recruits who were given 1973 as their year of allotment would not be covered by its decision, in view of the proceedings concerning them which were then pending before the Administrative Tribunal.

In disposing of the petitions and appeal before it, the Nityananda Kar (supra) this Court made the following observations:

"It is, therefore, clear that O.A.S. Class II cadre prior to merger was providing promotional channel to officers of O.A.S. Class III. Rules prescribed the manner in which direct recruitment and promotional appointment were to be made to O.A.S. Class II. The Full Bench of the Orissa High Court which we have accepted as laying down the binding and correct legal position clearly found that the mergerists from O.A.S. Class III were neither promotees nor direct recruits and formed a class by themselves. The 1972 resolution of the State Government had decided a spread-over process for absorption but in December, 1973, immediate and one-time merger was decided and acted upon. We have already held that the recruits to O.A.S. Class II with 1972 as the year of allotment were senior to the mergerists. Once the concept and application of 'year of allotment' is upheld, necessarily the O.A.S. Class II direct recruits of 1973 would in the facts and circumstances be senior to the mergerists. They are eleven in all as it appears from the Government notification of 16th of February, 1976. There would be no justification to have the mergerists from Class III service brought into the combined cadre in December, 1973, to be senior to these 1973 recruits \026 their number being substantial \026 who are only eleven people. On the other hand, there may be justification in the matter of fixing of seniority inter-se between the direct recruits of 1973 to O.A.S. Class II and the mergerists to follow the prevailing system of promoting Class III officers to Class II by a particular number and fixing the inter-se seniority in accordance with the then prevailing regulations."

With a view to implementing this direction of the Supreme Court, the Orissa Legislature enacted the impugned Act, the Orissa Administrative Service, Class-II (Appointment of Officers Validation) Amendment Act, 1992, which has come before us for judicial review.

Aggrieved by Section 2 of the 1992 Amendment Act, the petitioners have approached this Court for the necessary relief. The fate of the appeal, although prior in time to the Amendment Act, would also depend upon the validity of the same, and is accordingly being disposed of together with the said writ petition.

It would be appropriate at this stage to cite the material provision under challenge. Section 2 of the Amendment Act of 1992 reads as follows:

"2. Amendment of Section 3. \026 In Section 3 of the Orissa Administrative Service, Class-II (Appointment of Officers Validation) Act, 8 of 1987 (hereinafter referred to as the principal Act), for sub-section (2), the following sub-section shall be substituted, namely:-

'(2)(a) Such number of merger recruits as would have been entitled to promotion in the recruitment years 1972 and 1973 computed on the basis of percentage envisaged under Rule 10 of the Orissa Administrative Service, Class-II (Recruitment) Rules, 1959, shall be deemed to be the promotees of the respective years, and the determination of seniority of the merger recruits so

deemed to be the promotees, -

(i) of the year 1972 vis-'-vis the officers appointed to the Orissa Administrative Service, Class-II by direct recruitment in respect of the recruitment year 1972; and

(ii) of the year 1973 vis-'-vis the officers appointed to the Orissa Administrative Service, Class-II by direct recruitment in respect of the recruitment year 1973;

shall be in accordance with the same principle as followed for the determination of inter se seniority between the direct recruits and the promotees in relation to the Orissa Administrative Service, Class-II in respect of the recruitment years 1970 and 1971 and they shall be placed accordingly in the gradation list:

(b) The remaining merger recruits shall be placed below the direct recruits of the year 1973 in the gradation list'."

A two-Judge Bench of this Court referred the matter to the Bench of five Judges by an order dated 24.10.1996. The Constitution Bench, however, by an order dated 4.12.2001 thought it fit to place the same before a Bench of three Judges of this Court. The three-Judge Bench again referred the matter to Bench of five Judges expressing its agreement in Nityananda Kar (supra). That is how the matter is before us.

The petitioners and appellants have, not unnaturally, sought to place extensive reliance on certain observations made by the two-Judge Bench of this Court, which first considered the present matter. Four principal reasons have been set out in its order, which delineate the conflict with Nityananda Kar (supra). It would be apposite to cite the material portion of the order, which deal with the principal points of divergence:

"We have been taken through the judgment of this Court in Nityananda Kar's case by the learned Counsel for the parties. With utmost respect, we do not agree with the reasoning and the conclusions reached therein. Our reasons for reaching the said conclusion are as under:

(1) Prior to the merger, recruitment to the O.A.S. Class II was from four different sources under the Rules. After merger, the appointment to the service was confined only by way of direct recruitment. In the integrated cadre, the concept of 'year of allotment' had become unworkable.

(2) The merger order specifically provided that the members of the O.S.A.S. would rank junior to the members of the O.A.S. in the new cadre. That being the position, the appointees by way of direct recruitment to the integrated cadre are to be placed below those who were original members of the O.S.A.S. service.

(3) Mr. Sudhir Chandra Agarwal, learned counsel for the Respondent has taken us through the affidavit filed on behalf of the State Government wherein it is not disputed that there was no advertisement in respect to

any vacancy in the O.A.S. Class II. The advertisement related to the financial service and the police service. The vacancies advertised or identified after the merger of the cadres could not be filled by any of the modes indicated in the service rules except by the direct recruitment.

(4) That in any case, appointment in the new cadre which was constituted on December 21, 1973, could not be made with effect from the date prior to the constitution of the cadre, even if the vacancies existed prior to that date because the said vacancy would be treated to be a vacancy in the integrated cadre.

We, therefore, direct that these matters be placed before a larger bench of five judges of this Court. The Registry to place the papers before Hon'ble the Chief Justice for appropriate orders in this case."

It may be noted at the outset that none of the four reasons delineated by the Bench of two learned Judges found fault with the principle of year of allotment itself. Rather, the common thread through each of these reasons given by the Court is that the concept of year of allotment was in effect rendered impracticable and otiose by means of the Merger Resolution of December 1973.

The petitioners contended, first, that the effect of the merger of December 1973 is that appointment to the integrated cadre would be solely by means of direct recruitment, whereas prior to the merger, recruitment to the O.A.S. Class II could be by any of four different sources. That being the case, the principle of year of allotment was now redundant and its application uncalled for. Rule 4 of the Orissa Administrative Service Class-II (Recruitment) Rules deals with method of recruitment:

"4. Method of Recruitment \026 Recruitment to the Service shall be made by the following methods, namely:-

(a) direct recruitment by competitive examination;

(b) promotion from amongst the members of the Orissa Subordinate Administrative Service; and

(c) transfer from such other services or posts as are comparable with the Orissa Administrative Service as may be specified by Government from time to time;

(Explanation \026 Comparable service or post means any service or post specified by Government from time to time, responsibilities and emoluments attached to which are declared by Government to comparable in nature to that of a post of Deputy Collector)

(d) selection; and

(e) transfer or promotion of persons who are considered suitable for appointment to the service in accordance with the provisions of R. 9."

It is apparent that neither the Governmental Resolution of December 1973 nor the impugned Section 2 of the Amendment Act of 1992 have repealed, whether explicitly or implicitly, the Recruitment Rules of 1959. Indeed, the Resolution itself alludes to the relevant rules, thereby eradicating the possibility of the inference of an implied repeal of the 1959 Recruitment

Rules. Similarly, the 1973 Resolution did not in any way provide for a termination of recruitment of Deputy Collectors or an alternative method of recruitment, in which case it may not be averred that its effect was to repeal in toto the provisions contained in the 1959 Recruitment Rules. It was not until 1978 that the 1959 Recruitment Rules were repealed by virtue of the coming into force of the Orissa Administrative Service Recruitment Rules and Regulations for Promotion and Competitive Examination, 1978.

We, therefore, find ourselves unable to agree with the submission put forth by the learned counsel on behalf of the petitioners to the effect that the 1973 Resolution an implied repeal of the 1959 Recruitment Rules then in force.

Rather, the material question in terms of the contention of the petitioners is whether the Resolution of 1973 serves to render the very provision contained in Rule 4 of the 1959 Rules, cited above, as redundant and a nullity such that appointment to the O.A.S. II could only be by direct recruitment to the exclusion of all other sources.

This question, too, must be answered in the negative in view of the variety of sources of recruitment available to the Government, including, but not limited to, transfer from other services in terms of sub-clause (c), selection in terms of sub-clause (d) and transfer or promotion in accordance with R. 9 in terms of sub-clause (e) of Rule 4 of the 1959 Recruitment Rules. Even assuming no such parallel service or cadre existed in the period immediately after the merger, it would always be open to the Legislature to create more such services, in spite of the merger in 1973, from which transfer to the O.A.S. II could then be made. The legal effect, then, of the 1973 Resolution resulting in merger was only that sub-clause (b) of Rule 4 of the 1959 Recruitment Rules ceased to have any application, and could then be regarded as impliedly repealed.

It is further fallacious to submit, as the petitioners have done, that by virtue of integration of the cadres, the principle of year of allotment was rendered otiose and immaterial. As shown above, there remained a variety of sources from which recruitment to the O.A.S. II could be made post-merger including transfer from other comparable services. In any event, even if it were to be assumed that direct recruitment would now be the sole source of recruits, as long as there were vacancies which were identified before the entry into force of the Merger Resolution but which remained unfilled, the concept of year of allotment indeed remained applicable, albeit in a more limited form than before.

The concept of year of allotment is provided for by the Explanation contained in Rule 4(2) of the Orissa Administrative Service Class II (Appointment by Promotion, Transfer and Selection) Regulations, 1959 in the following terms :

"For the purpose of this sub-rule, year of allotment in relation to a member of Orissa Administrative Service means the year in respect of which Government have decided to fill up a vacancy in the cadre of the Orissa Administrative Service against which the member is shown."

The submission that the principle of year of allotment must be regarded as unworkable is quite apart, of course, from the argument that the principle of year of allotment is in and of itself unreasonable and, therefore, bad in law. Ordinarily, and as a matter of course, we are of the considered opinion, in line with Roshan Lal Tandon v. Union of India [(1968) 1 SCR 185] and other decisions of this Court, that it is the length of actual service that must be the determining factor in matters of promotion and consequential seniority. However, this Court has subsequently carved out a distinct exception to this general rule by virtue of its decision in Direct

Recruit Class II Engineering Officers' Association case (supra) by stating that where the seniority and the vested rights of the many have through years of accustomed practice become dependant upon the existence of a rule, this rule, if injurious to the rights of a few, would not be trifled with, unless it is unworkable or manifestly arbitrary or egregious.

The following observations made by the Constitution Bench in Direct Recruit Class II Engineering Officers' Association (supra) are particularly apposite in the context of the instant case:

"47 (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.

(k) That a dispute raised by an application under Article 32 of the Constitution must be held to be barred by principles of res judicata if the same has been earlier decided by a competent court by a judgment which became final."

This Court in Nityananda Kar (supra), in our view, correctly placed reliance on the prior decision of a Constitution Bench in Direct Recruitment Class II Engineering Officers' Association (supra), considering the immense lapse of time and long-established sanctity of the practice involving the application of the concept of year of allotment.

The second basis provided by the order of the two-Judge Bench expressing conflict with Nityananda Kar (supra) which was approved by the subsequently constituted three-Judge Bench, and which is relied upon presently by the petitioners, is that "the merger order specifically provided that the members of the O.S.A.S. would rank junior to the members of the O.A.S. in the new cadre. That being the position, the appointees by way of direct recruitment to the integrated cadre are to be placed below those who were original members of the O.S.A.S. service."

We have outlined above our reasons for upholding the validity of the principle of year of allotment, principal among which is our disinclination to tamper with a settled practice, in view of the dicta contained in the decision of this Court in the Direct Recruit Engineering Officers' Association case (supra). The concept of year of allotment has also been shown to be a workable one, inasmuch as it was still open to the Government in the post-1973 merger scenario to recruit officers from a variety of sources, including, but not limited to, transfer from comparable services. When once the concept of year of allotment is deemed to be upheld, it matters not that the first name of the O.S.A.S. would rank immediately below the last name of the erstwhile O.A.S. The material point of fact is that through the adoption of a legal fiction and by having recourse to his Constitutional function under Article 309 of the Constitution, the Governor of the State of Orissa appointed certain officers in the year 1975, who were appointed against vacancies which were identified in the year 1973, prior to the entry into force of the Merger Resolution of December 1973. That being the case, the legal fiction of year of allotment would operate in respect of the 1975 appointees as if they had been appointed in the year when the vacancies were initially identified; in other words, they would be deemed to have been appointed in the year 1973, prior to the merger of the O.A.S. II with the O.S.A.S., although their actual period of service was seen to commence only in 1975.

We are also constrained to point to the fact that by virtue of the Merger Resolution the principle of promotion contained in the 1959 Rules was upheld such that the promotees of a particular year would be accorded seniority above the direct recruits of that year. It is those members of the

O.S.A.S., such as the present petitioners, who were unable to secure promotion when their cases came up before the O.S.A.S. in the years preceding the Merger Resolution (1970-73), who seek seniority over the direct recruits by mere fact of their being members of the integrated service. In our considered opinion, such wholesale integration may not be regarded as the promotion of the whole of the O.S.A.S. This inference is supported by the various provisions contained in the Recruitment Rules of 1959, principally Rule 10 (7) and Rule 11.

Rule 10 (7) provides as follows:

"For recruitment to the Service by promotion or transfer or selection, under these rules, the State Government shall consult the Commission before appointment."

Rule 11 deals with the question of allocation of seniority:

"11. Seniority:- (1) The seniority of officers appointed to the service under Cls. (a), (b), (c) and (d) of R. 4 in any year shall be in the following order, namely:-

(a) officers appointed to the Service by promotion under Cl. (b) of R. 4, ranked inter se in the order in which their names are arranged by the Commission;

(b) officers appointed to the Service by transfer from other service or services of posts under Cl. (c) of R. 4, ranked inter se in the order in which their names are arranged by the Commission;

(c) officers appointed to the Service by selection under Cl. (d) of R. 4 ranked inter se in the order in which their names are arranged by the Commission;

(d) officers appointed to the Service on the results of a competitive examination in accordance with Cl. (a) of R. 4, ranked inter se in the order in which their names are arranged by the Commission."

Since the Merger of December 1973, does not fit within the various criteria for promotion, it may not be regarded as a wholesale promotion of all O.S.A.S. employees. The said employees who were integrated in the O.A.S. II are, rather, to be regarded as a class unto themselves, beneficiaries, as they are, of a one-off measure resulting in integration of the two cadres.

Under Article 309 of the Constitution of India, it is open to the Governor of the State to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the Legislature. As has been rightly pointed out by the Court in the Nityananda Kar case (supra), the Legislature, or the Governor of the State, as the case may be, may, in its discretion, bestow or divest a right of seniority. This is essentially a matter of policy, and the question of a vested right would not arise, as the State may alter or deny any such ostensible right, even by way of retrospective effect, if it so chooses or in public interest.

Learned counsel for the petitioners further contended that there was no advertisement in respect of any vacancy in the O.A.S. Class II, and that the direct recruits with 1973 as their year of allotment were appointed to the O.A.S. II in spite of the fact that the advertisements for that year were solely in respect of the Financial Service and the Police Service. This ground was not entertained by the Supreme Court in Nityananda Kar (supra) as it had not been pressed in the first instance before the High Court and was barred,

as such, by the principle of constructive res judicata. The parties being somewhat different in the present proceedings, this issue may now validly be raised before this Court.

We find ourselves unconvinced by the assertion that the omission of the O.A.S. II in the advertisement for recruitment in the year 1975, which referred solely to vacancies in the Orissa Financial and Police Services, would serve to nullify the appointments of the respondents direct recruits. As has rightly been observed in Nityananda Kar's case (supra), although this ground was repelled by the Court at the threshold, through the application of the rule of constructive res judicata, that normally this competitive examination was a common examination held for the O.A.S. as well. Even when an advertisement is issued, no candidate may be said to have acquired a vested right of selection. Conversely, when once the vacancies for the year 1973 were identified by the Government, it was free to conduct a competitive examination at a time and in a manner of its choosing. The common examination was in previous years held for the Orissa Administrative Service, as well as the Orissa Financial Service and Orissa Police Service. The mere fact of omission, then, of the O.A.S.II in the advertisement issued for the purpose would not of itself amount to rendering the appointments of the respondent direct recruits as nugatory. Learned counsel for the State of Orissa has submitted that the usual practice is to identify a notional number of vacancies, which may then be compromised by either excess or insufficient intake at the time of actual recruitment, depending upon such factors as the calibre of the candidates and the particular needs of the Government at that time. It was for similar reasons that the High Court of Orissa in Ananta Kumar Bose (supra) upheld the appointment of the opposite parties, although several more recruits were appointed than were originally envisaged in terms of vacancies.

The fourth and final basis of conflict between Nityananda Kar (supra) and Pradip Chandra Parija finds expression in the fourth reason given by the Bench of two learned Judges of this Court for disagreeing with the conclusions reached in the former instance.

The Court observed as follows:

"That in any case, appointment in the new cadre which was constituted on December 21, 1973, could not be made with effect from the date prior to, the constitution of the cadre, even if the vacancies existed prior to that date because the said vacancy would be treated to be a vacancy in the integrated cadre."

With utmost respect, we find ourselves unable to agree with the aforesaid observation. Indeed, this observation is one and the same as the observation that "the concept of 'year of allotment' had become unworkable," which we have already refuted above. To reiterate, by virtue of the fact that the vacancies were identified in the O.A.S. II at a point prior in time to the Merger effected on December 21, 1973, these vacancies would, as a matter of course, be treated as vacancies in the integrated cadre. Once the concept of year of allotment is deemed to be valid, we can arrive at no other conclusion than that such vacancies as were identified before the Merger Resolution would be filled by the Government in its discretion, notwithstanding the Merger effected on December 21, 1973.

A legal fiction was created for the purpose of providing year of allotment. Such legal fiction must be given its full effect. In Bhavnagar University vs. Palitana Sugar Mill Pvt. Ltd. and Others [(2003) 2 SCC 111] , the law is laid down in the following terms :

"The purpose and object of creating a legal fiction in the statute is well-known. When a legal fiction

is created, it must be given its full effect. In East End Dwellings Co. Ltd. v. Finsbury Borough Council, [(1951) 2 All.E.R 587], Lord Asquith, J. stated the law in the following terms:-

"If you are bidden to treat an imaginary state of affairs as real, you must surely, unless prohibited from doing so, also imagine as real the consequences and incidents which, if the putative state of affairs had in fact existed, must inevitably have flowed from or accompanied it. One of these in this case is emancipation from the 1939 level of rents. The statute says that you must imagine a certain state of affairs; it does not say that having done so, you must cause or permit your imagination to boggle when it comes to the inevitable corollaries of that state of affairs."

The said principle has been reiterated by this Court in M. Venugopal v. Divisional Manager, Life Insurance Corporation of India, Machilipatnam, A.P. & Anr. [(1994) 2 SCC 323]. See also Indian Oil Corporation Limited v. Chief Inspector of Factories & Ors.etc., [(1998) 5 SCC 738], Voltas Limited, Bombay v. Union of India & Ors.,[(1995) Supp. 2 SCC 498], Harish Tandon v. Addl. District Magistrate, Allahabad, U.P. & Ors. [(1995) 1 SCC 537] and G. Viswanathan etc. v. Hon'ble Speaker, Tamil Nadu Legislative Assembly, Madras & Anr. [(1996) 2 SCC 353]."

The effect of the Merger Resolution for the purposes of allocation of the benefits of seniority was merely that the erstwhile members of the O.S.A.S. would now rank as senior to those direct recruits whose year of joining service and year of allotment was later than 1973. In other words, at the time of the Merger in December 1973, the Sub-Deputy Collectors of the O.S.A.S. were placed in the gradation list below not alone the Deputy Collectors of the erstwhile O.A.S. II, but also below those officers who had been envisaged by the vacancies of the preceding years, but who were yet to be actually recruited. As stated by us above, the Merger itself did not purport to discontinue direct recruitment to the O.A.S. II, nor did it address itself to the question of the identified vacancies.

We are compelled to infer, then, that the vacancies identified for the year 1973, and other years preceding the Merger Resolution of December 1973, continued to exist and were appropriately filled by the Government in consonance with the principle of year of allotment.

It has rightly been stated by the Court in Nityananda Kar's case (supra) that in the interests of justice regard must be had to the fact that the respondent direct recruits are few in number as compared to the hundreds of mergerists who belonged to the defunct O.S.A.S. Much harm would come to the respondents were they to be placed below the merger recruits in the gradation list, whereas the mergerists are scarcely affected by the miniscule number of direct recruits placed above them. In any event, the Recruitment Rules of 1959 are manifest in their mandate that only the promotees of a particular year are to be placed above the direct recruits of that year. The present petitioners being mere mergerists, but not promotees in accordance with the relevant rules and regulations, may not claim the status of promotees, and have, therefore, been rightly placed in positions below the

direct recruits whose year of allotment was 1973.
In relation to the direct recruits no legislation existed. Earlier order was issued by reason of executive instruction which was recognized by 1987 Act but as noticed hereinbefore, a portion thereof was struck down. By reason of the impugned Act, the legislature has sought to strike a delicate balance. Having regard to the entirety of the fact situation obtaining in the case, we do not find that the said Act is discriminatory in nature. The reason for enactment of the impugned legislation has expressly been stated in the Statements of Objects and Reasons.

Seniority is not the fundamental right but is merely a civil right. The right of the seniority in this case was also not a vested or accrued right. In this case, the petitioners seek benefit to which they are not otherwise entitled. The legislature, in our opinion, has the requisite jurisdiction to pass an appropriate legislation which would do justice to its employees. Even otherwise a presumption to that effect has to be drawn. If a balance is sought to be struck by reason of the impugned legislation, it would not be permissible for this Court to declare it ultra vires only because it may cause some hardship to the petitioners. A mere hardship cannot be a ground for striking down a valid legislation unless it is held to be suffering from the vice of discrimination or unreasonableness. A valid piece of legislation, thus, can be struck down only if it is found to be ultra vires Article 14 of the Constitution of India and not otherwise. We do not think that in this case, Article 14 of the Constitution is attracted.

Shri Bhagat learned counsel placed strong reliance on the decision of this Court in the case of Roshan Lal Tondon (supra). According to him, this matter stands concluded by the said decision in petitioners' favour. Shri Bhagat passionately read and re-read the said decision. We are of the view that reliance by the learned counsel on Roshan Lal Tondon's case (supra) is totally mis-placed. In the said decision, promotees and direct recruits brought in one cadre were governed by one set of rules, which is not a case here.

In the result, we uphold the validity of the Orissa Administrative Service, Class-II (Appointment of Officers Validation) Amendment Act, 1992, and particularly Section 2 thereof, which rightly sought to give effect to the judgment of this Court in the case of Nityananda Kar (supra) .

The writ petition and appeal are accordingly dismissed. There shall, however, be no order as to costs.

WRIT PETITION (C) No. 611 OF 1992

Prafulla Kumar Das and Ors. .. Petitioners

Versus

State of Orissa and Ors. .. Respondents

CIVIL APPEAL No. 791 OF 1993

Pradip Chandra Parija and Ors. .. Appellants

Versus

Pramod Chandra Patnaik & Ors. .. Respondents

Dear Brother,

Draft judgment in the aforesaid matters is being sent herewith for your kind consideration.

\005\005.\005\005\005\005\005\005\005\005CJI.
(V.N. Khare)
.08.2003

Hon'ble Mr. Justice R.C. Lahoti.

WRIT PETITION (C) No. 611 OF 1992

Prafulla Kumar Das and Ors. .. Petitioners

Versus

State of Orissa and Ors. .. Respondents

CIVIL APPEAL No. 791 OF 1993
Pradip Chandra Parija and Ors. .. Appellants

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Hon'ble Mr. Justice S.B. Sinha.

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Hon'ble Dr. Justice AR Lakshmanan.

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