

**NON-REPORTABLE
IN THE SUPREME COURT OF INDIA**

CIVIL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (C) No.3009 of 2009

RAJESH KAGRA & ORS. PETITIONERS
VERSUS
STATE OF M.P. & ORS. RESPONDENTS
[ALONG WITH THE RECORD OF SLP(C) NO. 25083/2009]

WITH

SPECIAL LEAVE PETITION (C) NOS. 3029-3031 OF 2009

SANJAY KHANDE & ORS. PETITIONERS
VERSUS
STATE OF M.P. & ORS. RESPONDENTS

SPECIAL LEAVE PETITION (C) NO. 30579 OF 2009

R.L. BHARTIYA PETITIONER(S)
VERSUS
STATE OF M.P. & ORS. RESPONDENTS

J U D G M E N T

CHANDRAMAULI KR. PRASAD, J.

1. Special Leave Petition(C) No. 3009 of 2009 has been preferred against the order dated 31st July, 2008 passed in Writ Appeal No. 383 of 2008. In Special Leave Petition (C) Nos. 3029-3031 of 2009, petitioners assail the order dated 31st

July, 2008 passed by the Madhya Pradesh High Court in Writ Appeal No. 350 of 2008 and Writ Appeal No. 356 of 2008. Writ Appeal Nos. 350, 356 and 383 of 2008 have been dismissed by a common order dated 31st July, 2008 whereby the appeals preferred by the petitioners against the order dated 25th February, 2008 passed in Writ Petition No. 1295 of 2004 have been dismissed on the ground that the petitioners have no *locus standi* to prefer appeals and while doing so, it has been observed that in case their rights in any manner are affected, they have to agitate the same by filing separate writ petition. By order dated 5th September, 2008, passed in MCC No. 689 of 2008, the review application preferred against the aforesaid order has been dismissed.

2. Writ Appeal No. 276 of 2009 has been dismissed by order dated 13th August, 2009, relying on the judgment passed by the High Court in Writ Appeal No. 350 of 2008, which has been assailed in Special Leave Petition (C) No. 25083 of 2009. As the validity of the order passed in Writ Appeal No. 350 of 2008 is under consideration in Special Leave Petition (C) Nos.

3029-3031 of 2009, this petition will have the same fate as those Special Leave Petitions.

3. Another Special Leave Petition(C) No. 30579 of 2009 has been preferred against an interim order dated 11th November, 2009 passed by the learned Single Judge in Writ Petition No. 5203 of 2009 whereby the High Court while issuing notice declined to grant any interim relief.

4. For the purpose of disposal of these petitions, we have adverted to the pleadings in Special Leave Petition(C) Nos. 3029-3031 of 2009. Respondent Nos. 3 to 5 herein filed the writ petition; praying for correction of their position in the gradation list of Assistant Engineers and after such correction to promote them as Executive Engineers from the date their juniors were promoted. These reliefs were sought for, *inter alia*, on the ground that respondent nos. 3 to 7 of the writ petition - respondent nos. 6 to 10 herein, were promoted from Junior Engineers to Assistant Engineers in excess of their quota and therefore they are juniors to them. Petitioners

herein are down below them in gradation list and undisputedly juniors to both of them. The learned Single Judge by order dated 25th February, 2008 in Writ Petition No. 1295 of 2004 disposed of the writ petition with the following directions:

- “(1) That the respondents are directed to re-fix the placement of the petitioners in the gradation list of Assistant Engineers showing the position as on 01.4.2001 after considering the observations made by this Court and calculating the fact that at the time of absorption of Junior Engineers as Assistant Engineers how many posts were sanctioned of Assistant Engineers and whether direct recruitees had a quota for promotion and if the department found that the Junior Engineers who were absorbed as Assistant Engineers they were in excess of the quota or their posts were not sanctioned by the department as Assistant Engineers, certainly they cannot be placed above the petitioners. In such circumstances, the placement of the petitioners be modified accordingly;*
- (2) after modification in the placement of the petitioners in the gradation list of 2001, the petitioners are entitled for consequential relief of promotion etc. that may also be given to the petitioners;*
- (3) the aforesaid exercise be completed within a period of three months from the date of receipt of a certified copy of this order.*
- (4) No order as to costs.”*

5. The petitioners who were not party in the writ petition and do not claim seniority over either the petitioners or respondents of the writ petition having entered into the service much later than both of them challenged the aforesaid order of the learned Single Judge

in Writ Appeals on various grounds including the ground that after long lapse of time, the High Court ought not to have directed for preparation of fresh gradation list. By the impugned order, the appeals have been dismissed on the ground that they have no *locus standi* to prefer appeals and while doing so, observed that in case their rights are affected, they may file separate writ petition. An application for review of the aforesaid order was filed which has also been dismissed by order dated 5th September, 2008 passed in M.C.C. No. 689 of 2008.

6. We have heard learned Counsel for the parties and perused the records.

7. It is contended on behalf of the petitioners that the direction to grant consequential benefits has directly affected the petitioners and therefore the High Court erred in holding that the petitioners have no *locus standi* to file the appeals. Respondents, however, contend that the High Court has rightly held that the petitioners have no *locus*

standi to file appeals and relegated them to the remedy of fresh petition.

8. We do not find any substance in the submission of the learned Counsel for the petitioners. As the petitioners do not claim seniority over them, and the writ-petitioners having admittedly senior to them, they were not necessary party. Direction to grant consequential benefits is dependent upon the placement of the writ petitioners in the seniority list vis-a-vis the respondents of the writ petitions. Petitioners herein do not claim seniority over either of them. The plea of the petitioners that the respondents of the writ petitions who have been held junior to the writ petitioners have retired and the writ-petitioners still in service, hence latter would not come in their way for further promotion whereas the former would, is a fortuitous circumstance to confer right on them to challenge the order of the learned Single Judge. In our opinion, writ petitioners coming in their way for further promotions could not be a ground to hold that the petitioners have *locus standi* to challenge the

order of the learned Single Judge deciding *inter se* seniority between two groups of Assistant Engineers over whom, petitioners do not claim any seniority. On the basis of the seniority list, either the writ petitioners would have got the promotional post or the respondents herein but in no case the petitioners herein would have legitimately claimed those posts.

9. We are of the opinion that the High Court did not err in holding that petitioners have no *locus standi* to challenge the order and relegating them to the remedy of fresh petitions. In case petitioners seek to take recourse to the remedy of fresh petitions all the contentions raised herein shall remain open.

10. Special Leave Petition(C) No. 30579 of 2009 is against the issuance of notice and declining to pass interim order, hence, we are not inclined to interfere with the said order at this stage.

11. We dismiss all the petitions with the observations aforesaid.

.....**J.**
(HARJIT SINGH BEDI)

.....**J.**
(CHANDRAMAULI KR. PRASAD)

New Delhi,
September 17, 2010.