

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1801 OF 2009  
[Arising out of SLP (C) No.4326/2007]

State of Jammu &amp; Kashmir &amp; Ors. ... Appellants

Versus

Javed Iqbal Balwan &amp; Ors. ... Respondents

W I T HCONTEMPT PETITION (C) NO.309 OF 2007 IN  
SLP( C ) NO.4326 OF 2007J U D G M E N TAFTAB ALAM,J.

1. Leave granted.
2. This appeal arises from a dispute of seniority in the cadre of Tahsildars in the J & K Revenue (Gazetted) Service. A dispute of seniority between direct recruits and promotees normally tends to be bitter and thorny. This one is particularly so as it is the product of years of ad-hoc arrangements and it further involved, at least at the stage of the High Court

the additional dispute in regard to the date with effect from which the promotee Naib Tahsildars were regularised as Tahsildars. In this appeal, however, on behalf of the State of Jammu and Kashmir we are only concerned with the dispute of seniority between the promotees and the direct recruits in the J & K Revenue (Gazetted) Service. The dispute is now almost a quarter of a century old (the other part, with which we are not concerned in this appeal, of course goes far behind it). During this period of about twenty five years the matter has undergone three rounds of litigations and has seen countless writ petitions and Letters Patent Appeals in the High Court of J & K ending up in appeals, (including the one in hand), before this Court. The first round was in regard to the claim by a number of candidates, who, though finding place in the select list prepared by the State Public Service Commission were denied appointment by the State government. They claimed appointment to the different services under the State government on the basis of their selection by the Commission. On being successful in the first round and on entering the service, some of the direct recruits started the next round claiming what they considered their due seniority on the basis of the vacancies against which their appointments were made. At the end of round two, following the orders of the High Court and this Court, the State Government, gave the direct recruits **notional**

seniority with effect from 1984. This led to the beginning of the third round of litigation in which the direct recruits challenged the government order of their notional seniority and claimed seniority over the Naib Tahsildars who on being promoted as Tahsildars were regularised on those posts with effect from January 1, 1984 allegedly far in excess of their quota in the service and in violation of the statutory rules. In the last round a division bench of the High Court once again grappled with the matter and tried to finally resolve and settle the issue by a long and exhaustive judgment at the end of which the direct recruits were granted almost everything that they prayed for.

3. Before proceeding further it will be useful to state the relevant facts and we propose here to confine to the barest, necessary for disposing of this appeal. On October 8, 1973 the State Government appointed about 118 people as Naib Tahsildars in the State's Revenue (Subordinate) Service. The appointments were temporary and subject to the express condition that the appointees would pass the departmental examination for Naib Tahsildars conducted by the State's Public Service Commission within two years (being the period of probation under the relevant rules) failing which they would be liable to be discharged from service. Only a few were able to satisfy the condition but the default stipulation was never invoked in regard to those who were not able to clear the examination. Instead, the period of

Probation was extended by one year for about 83 appointees who were unable to pass the examination within the prescribed time. Later on, some of those Naib Tahsildars who were able to pass the departmental examination for Naib Tahsildar also appeared in the examination of Tahsildar held by the J & K Public Service Commission. The result of the examination was published on December 7, 1981 and four Naib Tahsildars who were able to pass the examination were promoted as Tahsildars in the State's Revenue (Gazetted) Service by order dated February 2, 1982. Later, the govt. retrospectively modified the relevant rules concerning the examination with effect from June 1, 1981. The relaxation of the rules benefitted a number of Naib Tahsildars who were shown as failed in the original result published on December 7, 1981 and consequently they too were declared passed in the examination. The government then constituted a selection committee for promotion of eligible officers as Tahsildars in the State's Revenue (Gazetted) Service. The committee held interviews but before any promotion orders were issued writ petitions came to be filed in the High Court challenging the amendment in the rules and the constitution of the promotion committee etc. in which the High Court gave certain interim directions. In the year 1983 the State Government felt that its programme of agrarian reforms was badly suffering due to large number of vacancies at

the level of Tahsildars. It, accordingly, took the decision, in interest of government work, to make temporary arrangements and by order dated March 17, 1983 granted promotion to 31 Naib Tahsildars as Tahsildars in their own pay scale, pending final selection by the departmental selection committee/Public Service Commission (as required by the rules) and subject to the result of the cases pending in High Court. That order too came under challenge before the High Court and as a result of the orders passed by the High Court the arrangement was discontinued in the year 1985. On February 9, 1989 the government accorded sanction to the confirmation of 28 Naib Tahsildars, who had passed the Naib Tahsildar examination within the stipulated period of two years against lien free posts with effect from October 8, 1975. On July 17, 1992 the government issued an order by which Naib Tahsildars, named in the order, were allowed the pay scale admissible for the post of Tahsildar from the respective dates they held the charge of that post. Further by government order dated June 11, 1993 a number of Tahsildars were posted with immediate effect as Special Officers, Revenue from the dates shown against their names in the order. The officers were assigned higher responsibilities in their own pay and grade. Later, on February 18, 1994 some of those officers were, having regard to their merit and suitability, appointed, as Assistant Commissioners. On February 24,

1994 the State Government came out with a circular stating that it was contemplating to induct the Revenue Officers into the J & K Administrative Service. The circular asked all the concerned officers to furnish their annual performance reports to the authorities by March 5, 1994. On November 20, 1996 the government sanctioned release of the pay scale of Deputy Secretaries in favour of 34 Under Secretaries who were earlier promoted to the post of Deputy Secretary in their own pay scale. Finally, by order No. Rev (A)128 of 1997, dated June 17, 1997 the government, in relaxation of the rules, accorded sanction to the regular appointment of Naib Tahsildars, the members of J & K Revenue (Subordinate) Service (whose names were stated in the annexure to the said order) as Tahsildars with effect from January 1, 1984. It needs to be stated here that the government order failed to satisfy some of the promotee Tehsildars who went to the High Court, challenging it and claiming regularisation from the respective dates (earlier to January 1, 1984) from which they were given the charge of the post of Tahsildar.

4. It is thus to be seen that over a period of about twenty four years over a hundred Naib Tahsildars appointed in the year 1973 in the State's Revenue (Subordinate) Service were inducted into the State's Revenue (Gazetted) Service as Tahsildars and some of them were even able to pass

on into the State's Administrative Service. They would be given the charge of the superior post initially on ad hoc and temporary basis and in their own scale of pay but later they would be sanctioned the pay scale of the superior post and accorded regular promotion to that post. The State Government would do so either by relaxing or sometimes even by amending or modifying the relevant rules. This process went on for a very long time amidst numerous orders passed by the J & K High Court in countless writ petitions and internal court appeals filed to challenge the seniority lists of the Naib Tahsildars/Tahsildars issued by the State Government from time to time or to question the actions of the State Government in granting ad hoc and temporary promotions to some from the Naib Tahsildars or in relaxing or amending the relevant rules to facilitate their promotion to the higher service/post.

5. Even while the disputes relating to inter se seniority of the Naib Tehsildars appeared to be hopelessly mired on the one hand in government orders/actions comprising grant of ad hoc promotions, issuance of circulars and amendment of statutory rules facilitating regularisation of those who were unable to satisfy the conditions of appointment and on the other hand in the litigations before the High Court, a fresh chapter was opened up by

induction of direct recruits in various Gazetted services including State's Revenue (Gazetted) Service.

6. The process for direct recruitment commenced in May 1979 when the J & K Public Service Commission issued the notification inviting applications to fill up the vacancies in different services for which requisition was made by the State Government. After about four years the Commission was able to prepare and notify the select list of 529 candidates in the year 1983. From the Commission's list only 265 candidates were appointed by the State Government in four batches from February 9 to September 20, 1984. Many of the selected candidates thus left behind approached the J & K High Court in a large number of writ petitions. Their main grievance was that though the rules provided for appointment of direct recruits and promotees in equal numbers, the government had created imbalance in the services between the two groups by appointment of the departmental promotees far in excess of their quota; that there were sufficient posts to accommodate all the candidates from the Commission's select list but those posts were wrongly filled up by the promotees and further that the candidates had acquired the right for appointment by virtue of their being selected by the Commission on the basis of the combined competitive selection list. They, accordingly, prayed for a direction to the



State Government to follow the quota rules that provided for appointment of direct recruits and promotes on 50:50 basis. In one of those writ petitions (SWP No. 680/1984) a learned single judge of the High Court upheld the claim of the petitioners and gave the following directions to the State Government:

“(a) That the respondent No.2 shall prepare a roaster (sic) indicating the number of vacancies available in respect of Combined Competitive Services on 20.8.1983 and show the number of departmental candidates promoted against the vacancies substantively. This would include those also who have retired from service after 20.8.1983.

“(b) After ascertaining the exact number of Departmental promotees to the various services, the same number of vacancies shall be filled up from among the direct recruits who have qualified in the Combined Competitive Service Examination and who are included in the list of 529 candidates. For the vacancies those candidates shall be considered for appointment who as arranged in order of merit beyond 265 candidates already appointed.

“(c) Till the imbalance is rectified and parity is achieved between the direct recruits and the Departmental promotes in terms of Govt. Order No.1285-GD of 1983 no departmental candidate should be promoted. In order to achieve the balance and parity between the two feeding channels of the Combined Competitive Service ratio of 50:50 should be adhered to while making the appointments.

“(d) Till the parity is achieved and imbalance is rectified between direct recruits and departmental candidates, the list of 529 candidates selected by the

respondent No.3 shall remain operative. After the parity is achieved, respondent No.3 may be at liberty to conduct fresh examination for filling up the vacancies which may arise in future.

“(e) Respondent No.2 shall prepare the list of available vacancies as on 20.8.1983 as also departmental candidates appointed against the said vacancies till date within two months from today. The number of vacancies which were in existence as on 20.8.1983 shall be published department wise after the period fixed herein above so as to inform the petitioners and other similarly situated with them who are included in the list of 529 candidates about their right to seek consideration for appointment against any post in order of merit arranged by the Public Service Commission.”

7. In the internal court appeal (L. P. A. 20/1986) preferred on behalf of the State against that order the Division Bench, presided over by Chief Justice A. S. Anand (as his Lordship then was) slightly modified the directions of the Single Judge and passed the following order with the agreement of the parties:

“The respondent State shall ascertain exact number of the departmental promotees to the various services referred to Public Service Commission for making selection or otherwise promoted by the State (other than in stop gap arrangement) from 1979 till the last reference was made by the respondent State to the Public Service Commission in September, 1984 and after ascertaining the same and taking into consideration the appointments of 265 candidates as direct recruits, rectify the imbalance, if any, between the direct recruits and the departmental promotees in the ratio, if any, prescribed in the Rules regulating the respective service, if any, shall

be filled from the category to which they belong. In the event as a result of rectification of the imbalance between the departmental promotees and the direct recruits, it is found that the resultant vacancies arise which have to go to the direct recruits, the State shall consider the cases of such candidates who had appeared in the written/viva voce and medical test conducted by the Public Service Commission in 1983 and the vacancies shall be filled up on merit accordingly. After the vacancies are so filled up, the list of the Public Service Commission prepared on 30 September, 1983 shall cease to be effective and the future vacancies may be filled up by the respondent State in accordance with rules as and when the same arise.”

8. A large number of writ petitions on the same issue were also pending before the Jammu Bench of the High Court. In view of the order passed in LPA 20 of 1986 all those cases were referred to a Division Bench and were disposed of by order dated August 22, 1991. In this order the Court gave the following directions:

“.....The respondents are directed that they shall appoint the petitioners and other out of 529 candidates selected by the Public Service Commission and rectify the imbalance between the departmental promotees and the direct recruits. Since 260 promotees have been appointed during the relevant period, 260 more candidates out of 529 candidates selected by the Public Service Commission shall be appointed to the seventeen aforementioned gazetted services in accordance with the merit. Even some or any of these candidates have become overage during the pendency of these writ petitions. They shall also be appointed because those candidates, if any, had become overage for no fault of

their own but because of the unjustified refusal of the respondents to appoint them despite their selection. Since the matter has already been delayed, the appointments shall be made within two months.”

9. Against the order of the High Court dated August 22, 1991 the State Government came to this Court in SLP (C) No. 518 of 1992, giving rise to Civil Appeal No. 3485 of 1992 which was disposed of by judgment and order dated August 27, 1992. It appears that this Court was informed that only 181 vacancies were available for the direct recruits and not 260 as represented before the Division Bench of the High Court. This Court, however, declined to go into that aspect of the matter but directed that only those candidates would be considered for appointment who approached the Court for seeking relief. The observations and direction of this Court in the aforesaid appeal, insofar as relevant for the present are reproduced below:

“Mr. D. P. Gupta, learned Solicitor General appearing for the State of Jammu and Kashmir has contended that the latest affidavit containing complete information regarding the vacancies was filed by Mr. R.C. Gupta, Deputy Secretary to Government, General Administration Department. According to him the Division Bench of the High Court did not take the said affidavit into consideration. Mr. D. D. Thakur, learned counsel appearing for the respondents-writ petitioners has very fairly conceded that there is a discrepancy while counting the deficient number of vacancies in the quota of direct recruits. According to him the number of deficient vacancies comes to 181 and not 260 as found

by the High Court. The view we are taking it is not necessary for us to go into his question.

“The selection in this case was completed in the year 1982. Most of the writ petitions were filed in the High Court and in this Court during the year 1984. Some of the petitions before the High Court were also filed during the period 1985 to 1989. *We are of the view that only the candidates who filed the writ petitions are entitled to the relief granted by the High Court. We, therefore, modify the relief granted by the High Court to the extent that only the candidates who filed writ petitions in the High Court or in this Court are entitled to be appointed in terms of the High Court Judgment.* We grant two months time from today to the State Government to make the necessary appointments in terms of the High Court Judgment as modified by us.

The appeal is accordingly disposed of in the above terms.”

[emphasis added]

A few things need to be noted at this stage. The orders of the High Court were clearly based on the plea for restoration of parity between the promotees and the direct recruits in the State's gazetted services. In order to restore the parity the High Court directed the State Government to freeze any further promotions to the gazetted services and to keep alive the select list prepared by the Commission in the year 1983 for filling up all the available vacancies till the ratio of 50:50 was restored between the promotees and the direct recruits. This Court, on the other hand viewed the

matter in the light of the individual rights of the candidates in the Commission's select list who approached the Court for enforcement of their rights. This Court accordingly modified the relief granted by the High Court and directed that only the candidates who filed writ petitions in the High Court or in this Court would be entitled to appointment in terms of the High Court Judgment. This Court clearly wanted to put a quietus to the matter. The other significant thing to note is that there is no indication in the High Court orders, much less in the order of this Court that the candidates from the Commission's select list should be appointed from any retrospective dates or in order to make room for their appointment the departmental promotees should be pushed back to their inferior parent service or as a consequence of the appointments of the direct recruits the departmental promotees would get pushed down in the seniority position.

10. Following the order of this Court the State Government appointed ninety seven candidates in eleven different services under the State vide order No.1065-GAD of 1992 dated November 13, 1992. Eighteen out of the ninety seven fresh recruits were appointed in the J & K Revenue (Gazetted) Service. Twenty three, among the newly appointed candidates (eight of them being out of the eighteen appointed to the J & K Revenue (Gazetted) Service) then started the second round of litigation by filing writ petitions

before the High Court claiming their seniority with effect from 1984 when their batch mates were appointed. One of the writ petitions SWP No. 904 of 1993 (Javed Iqbal Balwan and Ors. vs. State and Ors.) came up for hearing before a Division Bench of the High Court and was finally disposed of by Judgment and Order dated June 2, 1998 with the following directions:

“(i) The direct recruit, i. e., the petitioners are entitled to claim notional seniority with effect from the date the other direct recruit came to be appointed. This question is answered in favour of the direct recruits.

“(ii) That in view of the position of law noticed above the seniority of the petitioners is to be fixed while fixing so the person who are likely to be affected even though not party to this petition can be heard by the State Government. The State Government after taking note of the points of view which they would like to put across will re-fix the seniority. No direction is given at this stage to fix the seniority over and above such and such persons. As and when question of fixing the seniority is examined by the State Government the persons who are likely to be affected be heard. This question is again answered in favour of the direct recruits.

“In view of the agreed stand taken by the parties that this petition be decided on merit this is being finally decided. The respondent-State would take notice of the answers given to the two questions, referred to above and taken remedial measures. Let this be done so far as the relief which is to be granted vis-à-vis question No.1, within a period of one month from the date a copy of this order is made available to the respondents-State, by the petitioners. The other matter be decided within a period of three months. This period would also begin in the same manner i.e., with effect from the date of copy of this order is made available to the Respondent-State. The

process be intimated within the period of one week of the receipt and it be completed within the period referred to above.

“The petitions are disposed of accordingly”

11. The State Government, aggrieved by the order of the High Court once again brought the matter to this Court in CA No.6138 of 2001 which was disposed of on February 26, 2003 with the following directions:

“Having heard the learned counsel on either side and after perusal of the impugned judgment keeping in view the facts and circumstances of the case we do not find any good reason or valid ground to disturb the impugned judgment....

“We are informed that the directions given in the impugned judgment have yet not been complied with by the State Government, although a time frame was set in the impugned judgment. We think it is appropriate to direct the State Government to comply with the direction given in the impugned judgment, within three months from today. We direct accordingly. In complying with these directions the State Government shall hear the concerned parties as indicated in direction No.2, their point of view supported by the decision of this Court, if any. We are also told that contempt proceedings are initiated by the aggrieved parties. In the light of the directions we have given above, the contempt proceedings need not be perused. Hence the contempt proceedings are dropped. We are also told that there have been some promotions during this period and some of the officers have also retired from service. We do not say any thing on this aspect. It is for the State Government to examine all the aspect while considering the direction no.2 given in the impugned judgment.



“We also make it clear that till the directions contained in the impugned judgment are complied with, no regular promotions shall be made.”

12. In compliance with the directions of this Court, the State Government constituted a Committee of officers vide G.O.No.386-GAD of 2003, dated March 24, 2003 for hearing the concerned parties. The Committee after giving opportunity of hearing to all interested parties submitted its report to the Government. The Government considered the report of the Committee and vide Order No. 1145-GAD of 2003 dated September 4, 2003 granted notional seniority to the petitioners (of SWP 904 of 1993) with effect from September 24, 1984, that is, the date on which the last appointments were made from the Commission's 1983 select list. The State Government, however, declined to disturb the promotions granted to the members of the services, including the promotions made into the J & K Administrative Service during the period from 24.9.1984 to 4.9.2003 taking the stand that it was neither expedient nor in the interest of public administration to unsettle the settled positions.

13. Since this order formed the basis for the present round of litigation it would be expedient to reproduce it in full:

“.....Whereas, the Government is of the opinion that in terms of the judgment of the Hon'ble High Court read with judgment of Hon'ble Supreme Court dated

26.02.2003, the petitioners are entitled to notional seniority from 24.09.1984, i. e., date when last direct recruit was appointed on the recommendations of PSC after holding Combined Competitive Examination.

“Whereas, certain promotions have been made during the aforesaid period in different Services including promotions to J & K Administrative Service;

“Whereas, it is neither expedient nor in the interest of public administration to unsettle the settled issues; and

“Whereas, Government is further of the view that the promotions granted to the members of the Services including the promotions made into KAS during the period 24.09.1984 till issuance of this order should not be disturbed by grant of notional seniority to the petitioners.

“Now, therefore, it is ordered that the petitioners are hereby granted notional seniority; with effect from 24.09.1984 i.e. date on which the last direct recruit was appointed on the basis of recommendations of PSC after conducting Combined Competitive Examination.

“It is further ordered that grant of such notional seniority shall not disturb promotion effected in the Services w. e. f. 24.09.1984 till issuance of this order including promotions made into KAS.

“All the Departments shall assign the petitioners seniority on notional basis in their respective seniority list.”

14. Javed Iqbal Balwan and Ors. (petitioners in SWP No.904 of 1993)  
naturally felt aggrieved by the Govt. order dated September 4, 2003 and

they once again moved the High Court ( in the third round of litigation) in SWP No.2111 J of 2003 challenging the Govt. order dated September 4, 2003 as violative of the directions of the Court in the earlier round of litigation. At that time a number of writ petitions and internal court appeals were also pending in the High Court on different aspects of the same matter. Also pending were cases filed by some of the promotees challenging the government order dated June 17, 1997 granting them regularisation on the post of Tahsildar with effect from January 1, 1984 and claiming regularisation on the post of Tahsildar with effect from the respective dates (earlier to January 1, 1984) from which they held charge of that post. Before the High Court all these cases and SWP 2111 J of 2003 were put together in a large group and came up for hearing before a Division Bench. The Division Bench painstakingly traced out the history of the dispute from the very beginning, meticulously examined all the points of conflict among the various contending groups, referred to a very large number of case-law authorities and finally disposed of all the cases by a long and elaborate judgment giving a number of directions to the State Government. The Court identified two main issues arising in the cases, one concerning the validity of the departmental promotees' regularisation as Tahsildars in the J & K Revenue (Gazetted Service) with effect from January 1, 1984 and the other

regarding the direct recruits' claim of material and substantive seniority with effect from September 24, 1984, the date when the last appointments were made from the Commission's 1983 select list and their challenge to the Govt. order dated September 4, 2003 by which they were granted merely notional seniority from that date. On the first issue the Court took the view that in the special facts and circumstances of the case the regularisation of the promotees on the post Tahsildar in relaxation of the rules did not call for any interference. In this regard it observed in its judgment (at page 95 of the paper-book) as follows:

“In the present case we are, however, faced with a peculiar situation. The Naib Tehsildars were appointed as Tehsildars on temporary basis. They got appointed as they possessed the requisite qualifications for the post. They had qualified the departmental examination through the Commission. They continued to hold such posts for years together. The government took steps for their regularization through the Commission but the same did not materialise. Various cases were filed by the parties and interim directions passed by the Courts from time to time in such cases delayed the efforts of the Government to finalise the seniority lists. During this period most of the promotees got retired from the service. Some of the promotees were further promoted as Assistant Commissioners while a few of them have even been inducted into the KAS. Now it appears not only difficult but practically impossible to get regularization of these promotees done through the Commission. We feel it will not be in the interest of justice to ask these officers to get their regularizations approved by the Commission at this stage. Following the principle laid down in *Narender Chadha v. Union of India* ( supra), we

find that since the promotees have been allowed to function on higher posts for more than 15 years with due deliberation, it would be unjust to hold that they have no sort of claim to such posts. Treating the present case as an exception, in view of the circumstances indicated, we hold the regularization of the promotees in relaxation of the rule cannot be interfered with.”

There is no appeal against this part of the judgment and it has attained finality.

15. On the issue concerning the direct recruits and their challenge to the government order granting them merely notional seniority the High Court upheld their claim and held that direct recruits were entitled to substantive seniority with all consequential benefits with effect from the date the last candidate was appointed from the Commissions select list in the year 1984. The High Court was conscious that this would lead to a lot of upsetting in the seniority list with highly adversely consequences for the departmental promotees but it felt that that could not be helped. In the judgment coming under appeal it is observed (at pages 136-137 of the paper book):

“We are conscious of the fact that with the re-drawl of the seniority list, most of the promotees, who have been promoted or inducted into the KAS on the basis of existing seniority, may get effected. But that cannot be helped. They cannot be allowed to continue at the present place of seniority at the cost of the rights of the direct recruits. We only wish that the Government may, while considering the matter try to adjust them on the positions held by them and as far as practicable try not to

oust them lest it may cause humiliation to and dissatisfaction amongst them. In case the situation permits the Government may consider sanction of supernumerary posts for them in case any of such promotees is under a threat of reversion. We however leave it to the Government to deal with the matter and adjust such promotees, if any, in a just and suitable way without causing any prejudice to the rights of the direct recruits.”

In conclusion the court gave as many as 15 directions to the state government. We need not refer to all of them since the Advocate General appearing for the appellant State submitted that all the directions of the High Court were acceptable to the State Government **excepting** those at Serial Nos. XI, XIII, XIV and XV. These are as follows:

“XI. Direct recruits (Petitioners (DR)) shall be placed in the seniority list immediately after the last direct recruit appointed in the year 1984 namely Mohd Ismail Baji, as per the availability of posts within their quota. *This shall be notwithstanding the promotions granted to the promotees during the period.*

“XIII. Those petitioners who have qualified such examination and possess the requisite qualification, eligibility and other requirements of the rules shall be, subject to availability of the posts be considered for promotion and also for induction into the KAS in accordance with the rules *from the date their immediate junior, got such promotion/induction.*

“XIV. While according consideration and granting such promotion or induction into the KAS, as far as possible,

grant of grade and promotion to the promotees or their induction into the KAS shall not be disturbed. In case posts are not available for the qualified petitioners (DR), the Government may consider sanctioning of supernumerary post for them till the post become available.

“XV. Direct recruits who are promoted or inducted into the KAS as a result of this exercise shall be given the same seniority position vis-à-vis the promotees as they are entitled to as a result of their notional seniority w.e.f. 24.9.1984.”

The impugned direction at serial number XI tends to give to the direct recruits substantive and fully effective seniority from the year 1984. The other directions that follow are consequential to the basic direction at serial number XI.

16. The appellant, the Government of the State of J & K questions the correctness and validity of the directions of the High Court granting to those candidates who were appointed, pursuant to the Courts' directions, in the year 1992 substantive seniority with effect from 1984. It is stated on behalf of the State that though the dispute of seniority was confined mainly to the J & K Revenue (Gazetted) Service, the High Court's directions would unsettle the long settled positions and cause dislocation across the board in all the services under the State even where there was earlier no controversy. Appearing for the State the Advocate General submitted that the impugned

directions were bad and illegal being contrary to the law laid down by this Court and would lead to highly disruptive consequences not only in the State's Revenue Service but also in other services of the State.

17. Dr. Rajiv Dhawan learned senior advocate appearing on behalf of the respondents, on the other hand, contended that the issue of seniority of the direct recruits was no longer *res integra* and it was concluded in the earlier round of litigation. He submitted that by the judgment coming under appeal the High Court had simply given effect to its earlier order that was confirmed by this Court but was not complied with by the state government. He submitted that the Government order dated September 4, 2003, though issued in purported compliance with the Courts' order, was, as a matter of fact, in derogation of the Courts' direction and the High Court had rightly set it aside. In support of his submission Dr. Dhawan heavily relied upon the division bench order of the High Court dated June 2, 1998 in SWP No.904 of 1993 ( *Javed Iqbal Balwan & Ors. vs. State and Ors.* ) and the order dated February 26, 2003 passed by this Court in the appeal ( CA No.6138 of 2001) arising from the High Court order.

18. We are unable to accept Dr. Dhawan's submission. In the order dated June 2, 1998 the High Court had clearly said that the direct recruits were entitled to claim **notional** seniority with effect from the date the other direct



recruits from the Commission's list were appointed. Further, their seniority was directed to be fixed only after hearing those who might be affected by the exercise. This Court while endorsing the order of the High Court had directed the State Government to hear the concerned parties and to consider their point of view supported by the decision of this Court, if any. It was thus fully open to state government to take an independent view of the matter after giving an opportunity of hearing to those (departmental promotees) who would be affected by re-fixation of seniority in light of the decision of the Court.

19. It was in this context that the State Government took the decision to grant the direct recruits notional seniority without disturbing the earlier promotions as that would have resulted in unsettling positions that were long settled.

20. We see no infirmity in the decision taken by the State Government and we find the submissions of the learned Advocate General well founded. The impugned directions of the High Court are clearly contrary to the decision of this Court in a case coming from J & K itself in *Suraj Prakash Gupta vs. State of J & K*, AIR 2000 SC 2386. We find that among the large number of decisions referred by it, the decision in *Suraj Prakash Gupta* (supra) was also noticed by the High Court, at more than one places, in its

judgment coming under appeal but the High Court referred to and relied upon the decision on the issue of regularization of service of the departmental promotees on the post of Tehsildar in the States Revenue (Gazetted) Service. Strangely the High Court completely overlooked the decision on the point of antedating the seniority of the direct recruits. It may be noted that in paragraph 17 of the decision in *Suraj Prakash Gupta* (supra) this Court had framed one of the points arising for consideration as follows:

“(4) Whether the direct recruits could claim a retrospective date of recruitment from the date on which the post in direct recruitment was available, even though the direct recruit was not appointed by that date and was appointed long thereafter?”

21. This Court answered the question in paragraphs 78 and 79 of the judgment in the following terms:

“Point 4:

“Direct recruits cannot claim appointment from date of vacancy in quota before their selection:

“78. We have next to refer to one other contention raised by the respondent-direct recruits. They claimed that the direct recruitment appointment can be ante-dated from the date of occurrence of a vacancy in the direct recruitment quota, even if on that date the said person was not directly recruited. It was submitted that if the

promotees occupied the quota belonging to direct recruits they had to be pushed down, whenever direct recruitment was made. Once they were so pushed down, even if the direct recruit came later, he should be put in the direct recruit slot from the date on which such a slot was available under direct recruitment quota.

“79. This contention, in our view, cannot be accepted. The reason as to why this argument is wrong is that in service jurisprudence, a direct recruit can claim seniority only from the date of his regular appointment. He cannot claim seniority from a date when he was not born in the service. This principle is well settled. In *N.K.Chauhan v. State of Gujarat*, (1977) 1 SCC 308 (at p.321): (AIR 1977 SC 251 at P.259: 1977 Lb IC 38 at P.46) Krishna Iyer, J. stated:

“later direct recruit cannot claim deemed dates of appointment for seniority with effect from the time when direct recruitment vacancy arose. Seniority will depend upon length of service.”

“Again, in *A.Janardhana v. Union of India*, (1983) 2 SCR 936: (AIR 1983 SC 769: 1983 Lab IC 849) it was held that a later direct recruit cannot claim seniority from a date before his birth in the service or when he was in school or college. Similarly it was pointed out in *A.N. Pathak vs. Secretary to the Government*, 1987 Suppl SCC 763 (at p.767): (AIR 1987 SC 716 at P.718: 1987 Lab IC 638 at P.651) that slots cannot be kept reserved for the direct recruits for retrospective appointments.”

Had the High Court noticed the above passage in the decision in *Suraj Prakash Gupta* (supra) it would not have fallen into the error and made the impugned directions.

22. Seen in the light of the decision in *Suraj Prakash Gupta* (supra) the impugned directions appear quite contrary to the law laid down by this Court and are clearly unsustainable. We accordingly accept the appeal of the State Government and set aside the impugned directions. It is made clear that we do not propose to disturb the other directions particularly those relating to monetary and other benefits to the direct recruits.

23. In the result this appeal is allowed but with no order as to costs.

24. In view of the decision in the Civil Appeal, the prayer for impleadment (I.A.No.6) is rejected.

25. For the same reason Contempt Petition (C) No.309 of 2007 is also dismissed.

.....J.  
[Arijit Pasayat]

.....J.  
[P.Sathasivam]

.....J.  
[Aftab Alam]

New Delhi,  
March 23, 2009.