

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**Civil Appeal No.6007 of 2019
(@SLP (C) No. 31825 of 2018)**

Ganga Vishan Gujrati & Ors.

...Appellants

Versus

State of Rajasthan & Ors.

...Respondents

With

**Civil Appeal No. 6009 of 2019
(@SLP (C) No. 154 of 2019)**

With

**Civil Appeal No. 6008 of 2019
(@SLP (C) No. 153 of 2019)**

J U D G M E N T

Dr Dhananjaya Y Chandrachud, J

1 Adjudicating on a vexed issue of service jurisprudence, a Division Bench of the High Court of Judicature of Rajasthan allowed a batch of Special Appeals and reversed a judgment of the learned Single Judge dated 19 April 2018. The consequence of the judgment of the Division Bench dated 6 August 2018 is that the writ petition instituted by the appellants under Article 226 of the Constitution stands dismissed. This has given rise to the present batch of appeals. Since similar issues arise, all the appeals were heard together.

2 The appellants were appointed as Patwaris in the Revenue Department on 21 December 1993. On 17 June 2011, an advertisement was issued by the State of Rajasthan for holding a departmental examination to select candidates for 93 vacancies in the post of Land Records Inspector¹. The vacancies related to the years 2008-09 and 2009-10. A fresh advertisement dated 28 January 2013 notified an increase in the number of vacancies to 155, including the vacancies for 2010-11. In response to a query made on 24 December 2014 under the Right to Information Act 2005, a year-wise bifurcation of the 155 vacancies was provided indicating that:

- 67 vacancies arose in 2008-09;

¹ "LRI"

- 26 vacancies arose in 2009-10; and
- 62 vacancies arose in 2010-11.

3 On 16 May 2013, the appellants appeared for the departmental examination and were declared successful for the post of LRI. On 7 November 2013, a provisional seniority list was issued from 1 April 2012. The grievance of the appellants is that though (in their submission) they were appointed against vacancies that arose in 2008-09, 2009-10 and 2010-11, their names were not included in the provisional seniority list. On 31 March 2014, the appellants were promoted as LRIs in pursuance of which they have been working on that post. On 12 March 2015, the Rajasthan Revenue Board² issued a communication to the Collector to prepare a list of persons who were appointed as LRIs against vacancies for the year 2009-10. The names of the appellants did not find mention in the seniority list as on 1 April 2012. Orders were issued on 11 June 2015, 6 July 2015 and 6 August 2015 promoting LRIs to the post of Nayab Tehsildar, treating them to have been appointed on the post of LRI against the year of promotion in which the vacancies arose. This was in terms of a notification dated 8 October 2014 by which Rule 171-A of the Rajasthan Land Revenue (Land Records) Rules 1957³ was amended to change the criterion for determining seniority from the date of continuous officiation on the post of LRI to the recruitment year of promotion. The appellants were aggrieved by the denial of the benefit of the notification dated 8

² "Board"

³ "1957 Rules"

October 2014. Aggrieved by what was perceived as differential treatment, a representation was submitted on 14 September 2015 to the Chairman of the Board of Revenue for granting the appellants the benefit of the notification dated 8 October 2014 and placing them in the seniority list against the recruitment year. A final seniority list, computing seniority as on 1 April 2012 was issued on 12 May 2016 in terms of Rule 171-A(2). According to the appellants, their names were not included in the seniority list despite the fact that the recruitment year was 2010-11.

4 This led to the institution of a Writ Petition⁴ by the appellants before the High Court of Rajasthan seeking a direction for the declaration of appointments; promoting them against the recruitment year of promotion and placing them in the seniority list issued on 12 May 2016 against the recruitment year of promotion with consequential benefits. On 24 April 2017, another final seniority list was issued determining seniority as on 1 April 2014. The appellants claim that they were placed below persons who were promoted against vacancies which arose after the year of vacancies against which the appellants were promoted. During the pendency of the Writ Petition, an order was passed by the State of Rajasthan on 8 May 2017 whereby, persons along with the appellants who were placed in the seniority list dated 24 April 2017, were sought to be removed from the list and were directed to

⁴ SB Civil Writ Petition No 6530/2016

be treated as appointed in 2014-15. This gave rise to a subsequent Writ Petition⁵ before the High Court.

5 By a judgment dated 19 April 2018, the Single Judge allowed the Writ Petition by setting aside the action of the State in not regarding the year of promotion of those, including the appellants, who were selected pursuant to the advertisements dated 17 June 2011 and 28 January 2013 against vacancies for 2008-09, 2009-10 and 2010-11. The Single Judge held that persons selected under Rule 284(2) of the 1957 Rules through a competitive examination restricted to serving Patwaris were entitled to be promoted against the vacancies of the respective years subject to their eligibility. The State was accordingly directed to place persons selected in the final seniority list issued on 12 May 2016 against the recruitment year of promotion with consequential benefits.

6 The judgment of the Single Judge has been reversed in appeal by the Division Bench of the High Court on 6 August 2018.

7 Assailing the judgment of the Division Bench, the appellants moved this Court in proceedings under Article 136 of the Constitution. Pleadings have been completed. We have heard Mr Paras Kuhad, Senior Counsel on behalf of the Appellants; Dr Manish Singhvi, Senior Counsel appearing for the State of Rajasthan;

⁵ SB Civil Petition No 6299/2017

Mr P N Misra, Senior Counsel, Mr Manoj Swarup, Senior Counsel and Mr Hitendra Nath Rath, Mr Rohit K Singh and Ms Pratibha Jain, Counsel for the contesting respondents.

8 In order to appreciate the nature of the controversy in the present batch of appeals, it is necessary to understand the enabling legal framework. The State of Rajasthan, in pursuance of its powers conferred by Section 261(2) of the Rajasthan Land Revenue Act 1956⁶, laid down provisions governing the service conditions of the employees of the Land Revenue Department. They were embodied in the 1957 Rules. Rule 284 of the 1957 Rules regulates the mode of selection to the post of LRI. Initially selection was envisaged through direct recruitment and on seniority-cum-merit. Later, as explained below, a proportion was set apart for in-service candidates who passed a competitive departmental examination. Thereafter, direct recruitment was abolished. Rule 284 was amended from time to time in the following manner:

- On 22 September 1977, recruitment to the post was to be made on the basis of direct recruitment (50 per cent) and seniority-cum-merit (50 per cent);
- On 27 June 1981, the quota for promotion through seniority-cum-merit was increased to 65 per cent; 15 per cent was to be through a competitive examination amongst serving Patwaris and 20 per cent was to be through direct recruitment; and

⁶ "Act 1956"

- On 22 August 1985, promotion through seniority-cum-merit was increased to 80 per cent, while selection through a departmental examination for serving Patwaris was increased to 20 per cent. The category of direct recruitment was deleted.

Rule 284, as amended, reads thus:

“284. Selection of candidates for admission to the school in the respective cadre strength shall be made:-

- (i) by promotion of Patwaris of the Revenue and Land Records Departments, on the basis of seniority-cum-merit, for 80% of the vacancies;
- (ii) on the basis of a competitive examination which shall be restricted to serving patwaris of Revenue (Land Records) Department who fulfill the conditions of eligibility as given in Rules 286, for 20% of the vacancies. Provided that the minimum age limit for such patwaris shall be 45 years.”

Rule 285 requires the Board to notify the actual number of vacancies that will be filled up by recruitment from among the serving Patwaris of the Revenue (Land Records) Department and the number to be allotted to the Scheduled Castes and Scheduled Tribes.

Rule 286 prescribes the qualifications:

“286. Qualifications - Candidates intending to apply for selection must possess the following qualification: -

- (i) That he is a patwari of Revenue (Land Records) Department and has five years of service experience as patwari;
- (ii) That he has passed Secondary Examination or any other equivalent examination recognized by Government;

- (iii) That he is not above 45 years of age on the first day of January, next following the last date fixed for receipt of application for admission to the said school;
- (iv) That he is patwar diploma holder or he is exempted from this diploma as per rules.”

Rule 287 requires a competitive examination to be held by the Board for recruitment from amongst serving Patwaris of the Revenue (Land Records) Department for admission to the training school in the manner laid down in the 1957 Rules. Rule 288 provides for the submission of applications, the subjects for the examination, preparation of a list of candidates securing qualifying marks, making of admissions to the school, reservations, salary during training, grant of diplomas on the passing of the training examination and the maintenance of a list of successful candidates on the basis of the aggregate marks obtained in the examination. Rule 299 provides that upon the completion of one year of probation period, candidates would be eligible for being confirmed. Rule 299 stipulates that promotees of the same year shall rank senior to the direct recruits from serving Patwaris of the same year. Rule 299 contains a reference to direct recruitment though the provision for direct recruitment has been done away with in Rule 284.

9 On 22 September 1977, an amendment was made to the 1957 Rules by the introduction of Part V-A containing Rules 347-A and 347-B. Rule 347-A provides thus:

“347-A. Regulation of pay, Leave, allowances, Pension etc.-
Except as otherwise provided in these rules, the pay

allowances, pension, leave and other conditions of service of the Patwaris, Inspectors' Land Records and Sadar Qanungos shall be regulated by the following rules as amended from time to time:-

1. The Rajasthan Travelling Allowance Rules, 1971;
2. The Rajasthan Civil Services (Unification of Pay Scales) Rules, 1950;
3. The Rajasthan Civil Services (Rationalisation of Pay Scales) Rules, 1956;
4. The Rajasthan Service Rules, 1951;
5. The Rajasthan Civil Services (Revised Pay) Rules, 1961;
6. The Rajasthan Civil Services (New Pay) Rules, 1968
7. Any other rules prescribing general conditions of service made by the appropriate authority under the proviso to Article 309 of the Constitution of India and for the time being in force.
8. Any other general order or amendment in the Rajasthan Subordinate Services (Recruitment and other Service Conditions) Rules 1960, issued by the Department of Personnel shall mutatis mutandis be applicable unless any order to the contrary is issued by the Government."

Rule 347-B provides thus:

"347-B Application of Certain miscellaneous Rules. - Notwithstanding anything contained in these rules, the following rules shall apply to the recruitment and other conditions of service of the Patwaris, Inspectors, Land Records and Sadar Qanungos as they apply to other categories of Government servants: -

1. The Rajasthan Civil Services (Absorption of Surplus Personnel) Rules, 1969.
2. The Rajasthan Civil Services (Substantive appointment and determination of seniority of temporary employees) Rules, 1972.
3. The Rajasthan Services (Recruitment by promotion against vacancies of Earlier Years) Rules, 1972."

10 Rule 347-A provides that except as otherwise provided in the rules, pay, allowances, pension, leave and other conditions of service are to be regulated by the rules enumerated under eight categories. Among the rules which have been enumerated are the Rajasthan Subordinate Services (Recruitment and other Service Conditions) Rules 1960⁷. Any general order or amendment in the 1960 Rules is made applicable, *mutatis mutandis*. Besides this, entry 7 refers to other rules prescribing general conditions of service made under Article 309 of the Constitution, for the time being in force. The opening words of Rule 347-A make the applicability of the enumerated rules subject to a provision specifically contained in the 1960 Rules. On the other hand, Rule 347-B contains an overriding provision under which notwithstanding anything contained in the 1957 Rules, conditions of service would be governed by certain enumerated rules. Among them are the Rajasthan Services (Recruitment by promotion against vacancies of earlier years) Rules 1972⁸.

11 A significant distinction which must be noticed between Rule 347-A and Rule 347-B, lies in their prefatory words. Rule 347-A begins with the expression “except as otherwise provided in these rules”. Rule 347-B commences with the expression “notwithstanding anything contained in these rules”. The significance of this difference in terminology lies in the fact that the rules enumerated in Rule 347-A will govern the conditions of service unless a specific provision on the subject is contained in the 1960 Rules. On the other hand, the rules which have been

⁷ “1960 Rules”

⁸ “1972 Rules”

enumerated in Rule 347-B will govern the service conditions irrespective of what is contained in the other provisions of the 1957 Rules. To put it differently, the rules which are enumerated in Rule 347-A of the 1957 Rules are made subservient to provisions contained in the 1960 Rules. On the other hand, the rules referred to in Rule 347-B of the 1957 Rules have an overriding effect over any other provision contained in the 1957 Rules. This is the plain consequence which ensues from the use of the expression “except as otherwise provided in these rules” in Rule 347-A as distinguished from the expression “notwithstanding anything contained in these rules” in Rule 347-B. The former is an indication of subservience. The latter is an indication of overriding effect.

12 Now, it is necessary to analyse the rules adverted to in entries 7 and 8 of Rule 347-A of the 1957 Rules.

13 The 1960 Rules were made to govern the recruitment and other conditions of service of persons appointed to the subordinate service in various departments of the State other than posts regarding which separate service rules had been or would be promulgated. Rule 9 provided for a year-wise determination of vacancies on 1 April of each year by the appointing authorities. Rule 9 of the 1960 Rules stipulated thus:

"9. Determination of Vacancies: - (1) (a) Subject to the provisions of these Rules, the Appointing Authority shall

determine on 1st April every year, the actual number of vacancies occurring during the financial year.

(b) Where a post is to be filled in by a single method as prescribed in the rule or schedule, the vacancies so determined shall be filled in by that method.

(c) Where a post is to be filled in by more than one method as prescribed in the Rules or Schedule, the apportionment of vacancies, determined under clause (a) above, to each such method shall be done maintaining the prescribed proportion for the overall number of posts already filled in. If any fraction of vacancies is left over, after apportionment of the vacancies in the manner prescribed above, the same shall be apportioned to the quota of various methods prescribed in a continuous cyclic order giving precedence to the promotion quota.

(2) The Appointing Authority shall also determine the vacancies of earlier years yearwise which were required to be filled in by promotion, if such vacancies were not determined and filled earlier in the year in which they were required to be filled in."

14 On 2 March 2001, the Rajasthan Subordinate Services (Recruitment and Other Service Conditions) Rules 2001⁹ were notified under the proviso of Article 309 of the Constitution. Rule 13 of the 2001 Rules requires the appointing authority to determine the vacancies actually occurring on 1 April of every financial year:

"13. Determination of vacancies: -

(1) Subject to the Provisions of these rules, the Appointing Authority shall determine on 1st April every year, the actual number of vacancies occurring during the financial year.

(2) Where a post is to be filled in by a single method as prescribed in the Rule or Schedule, the vacancies so determined shall be filled in by that method.

(3) Where a post is to be filled in by more than one method as prescribed in Rules or Schedule, the apportionment of vacancies, determined under sub-rule (1) above, to each such method shall be done maintaining the prescribed proportion for the overall number of post(s) already filled in. If any fraction of vacancies is left over, after apportionment of the vacancies in the manner prescribed above, the same

⁹ "2001 Rules"

shall be apportioned to the quota of various methods prescribed in a continuous cyclic order giving precedence to the promotion quota.

(4) The Appointing Authority shall also determine the vacancies of earlier years year wise which were required to be filled in by promotion, if such vacancies were not determined and filled earlier in the year in which they were required to be filled in."

Rule 9(1)(c) of the 1960 Rules and Rule 13 of the 2001 Rules require vacancies to be apportioned between each method of promotion. Rule 9(2) of the former and Rule 13(4) of the latter requires the determination of vacancies of earlier years which were required to be, but were not filled in by promotion, in the year in which the vacancies should have been filled in.

Rule 35 speaks of the eligibility, criteria and procedure for promotion. Rule 35, insofar as is material, reads thus:

"35. Eligibility, Criteria and Procedure for Promotion: -

(1) As soon as the Appointing Authority determined the number of vacancies under rule 13 of these rules and decides that a certain number of post(s) are required to be filled in by promotion, it shall subject to provisions of sub-rule (4), prepare a correct and complete list of the senior most persons who are eligible and qualified under these rules for promotions to the class of post(s) concerned.

(2) the persons enumerated in Column 6 of Schedule shall be eligible for promotion to posts specified against them in Column 4 subject to their possessing minimum qualification and experience on the first day of the month of April of the year of selection as specified in Column 7.

...

(6) If any subsequent year, after promulgation of these rules vacancies relating to any earlier year are determined under rule 14 which were required to be filled

by promotion, the Committee shall consider the cases of all such persons who would have been eligible in the year to which the vacancies relating irrespective of the year in which the meeting of the Committee is held and such promotions shall be governed by the criteria and procedure for promotion as was applicable in the particular year to which the vacancies relate and the Service/Experience of an incumbent who has been so promoted, for promotion to higher post for any period during which he/she has not actually performed the duties of the post to which he/she would have been promoted, shall be counted. The pay of a person who has been so promoted shall be refixed at the pay which he/she would have derived at the time of his/her promotion but no arrears of pay shall be allowed to him/her..."
(Emphasis supplied)

Under Rule 13 of the 2001 Rules, the appointing authority must determine the actual number of vacancies occurring during the financial year on the first day of April of each year. When a post is filled in by more than one method, the vacancies have to be apportioned, to every such method by maintaining the prescribed proportion. Vacancies which were required to be filled in by promotion in earlier years, but which were not determined and filled in earlier are similarly required to be determined. Under Rule 35(2), eligibility for promotion is defined with reference to the possession of minimum qualifications and experience on the first day of April of the year of selection. Under sub-rule (6) of Rule 35, where vacancies of an earlier year are determined as being required to be filled by promotion, the committee is under a mandate to consider all such persons who would have been eligible in the year to which the vacancies relate, irrespective of the year in which the meeting is held. The criteria and procedure for promotion would be governed by what is applicable to the

year to which the vacancy related. Significantly, the service or experience of a person who has been promoted shall be counted for promotion to a higher post for any period during which the candidate has not actually performed the duties of the post. While the pay of a person promoted would be re-fixed, no arrears of pay are required to be given.

15 Rule 347-B of the 1957 Rules contains a reference to the 1972 Rules. The 1972 Rules comprised of six rules, which are extracted below:

"1. Short title and commencement

(1) These rules may be called the Rajasthan Services (Recruitment by Promotion against Vacancies of earlier years) Rules, 1972.

(2) They shall come into force at once.

2. Where a service rule, regulating recruitment and condition of service made under the proviso to Article 309 of the Constitution of India, provides for recruitment by both direct recruitment and promotion and where promotion quota of any earlier year could not be filled up in the absence of recommendations of the Departmental Promotion Committee appointed under the rule pertaining to the Service the appointing authority shall determine the number of vacancies which were required to be filled up by promotion specifying the year with reference to which the vacancies are to be filled up.

3. The Departmental Promotion Committee, appointed under the service rules referred to in rule 2 shall make their recommendation within a period of three months from the date the competent authority makes the determination of the number of vacancies and specifies the year of vacancies of earlier years under the said rule whereupon the appointing authority shall giving due regard to the recommendations of the Departmental Promotion Committee, make the appointments by promotion in the promotion quota vacancies relevant to the year specified under rule 2.

4. When the appointing authority make appointments by promotion under rule 3, it shall specify the year in which such promotion shall be deemed to have been made.

5. Where any vacancy existed in the promotion quota in a year earlier than that in which an appointment by promotion was made on the recommendation of the Departmental Promotion Committee the appointing authorities shall modify the appointment order by specifying the year in which such promotion shall be deemed to have been made.

6. Where any appointment by promotion has been made under rule 3 or where the appointing authority has specified the year of promotion under rule 5, the person who has been so promoted shall not be entitled to claim any arrears of pay for any period during which he has not actually performed the duties of the post to which he has been promoted."

Rule 2 contemplates a situation in which the service rules framed under the proviso to Article 309 for regulating recruitment and conditions of service provide for both direct recruitment and promotion. Where the promotional quota of any earlier year is not filled in the absence of a recommendation of the Departmental Promotion Committee¹⁰, the appointing authority has to determine the vacancies which were required to be filled up by promotion. Thereupon, the DPC has to make its recommendation within three months of the determination by the competent authority specifying the number and the year of vacancies. The appointing authority is then required to make appointments by promotion in the promotion quota vacancies relevant to the year specified in Rule 2. While making an appointment under Rule 3 by promotion, the appointing authority has to specify the year in which the promotion shall be deemed to have been made. Consequently, where a vacancy existed in the promotion quota in an earlier year, prior to the year in which the appointment by promotion is made, the appointing authority has to specify the year in which the promotion shall be deemed to have been made. However, in such a

¹⁰ "DPC"

case, no arrears of pay for the period during which the appointed candidate has not worked are payable.

16 In order to complete the narration of the relevant provisions, a reference is necessary to Rule 171-A of the 1957 Rules which deals with seniority. Rule 171-A, read as follows insofar as is material prior to its amendment:

“171-A. Seniority. - (1) The seniority of Inspectors, Land Record working in the various districts will be interlaced by the Board of Revenue and the Secretary (Land Records) Revenue Board will maintain an up-to-date list of seniority of the Inspectors, Land Records working in the Department.

(2) The seniority of the Inspector, Land Records will be determined from the date of their continuous officiation on the post of Inspector Land Records in the Land Records Department and/or Inspector in the Settlement/Consolidation /Colonization Department or any other equivalent post in such Departments provided such officiation was not fortuitous or ad hoc in nature and subject to the condition that they possess a diploma of having passed the Girdawar Qanungo Examination:...”

By an amendment which was notified on 8 October 2014, sub-rule 2 of Rule 171-A has been substituted to read thus:

"(2) The seniority of inspector, Land Records shall be determined on the basis of recruitment year of promotion on the post of Inspector, Land Records in the Land Records Department and inspector in the Settlement Department, Colonisation Department and Consolidation Department."

17 Now, it is in this background, that it becomes necessary to advert to the area of contest, as it emerges from the rival submissions which have been urged before this Court.

18 Mr Paras Kuhad, learned Senior Counsel appearing on behalf of the appellants, submitted thus:

- (i) The judgment of the Division Bench of the High Court dated 6 August 2018 denies to the appellants selected by the 'competitive examination route', the benefit of seniority on the post of LRI, based on the year of vacancy, though persons who have been promoted on the basis of seniority-cum-merit have been granted seniority on the basis of the year of vacancy;
- (ii) Though vacancies arose in years 2008-09, 2009-10 and 2010-11 on the post of LRI, selections were not held in time. These vacancies were to be filled up in the proportion of 80 per cent for seniority-cum-merit and 20 per cent by competitive examination. The selection process for these vacancies was not held year-wise and the vacancies for all the three years were clubbed together. Appointment orders for the 80 per cent seniority-cum-merit vacancies were issued in 2012, while those for the 20 per cent competitive exam vacancies were issued on 31 March 2014;
- (iii) Originally, while drawing up the provisional list on 7 November 2013, LRIs who were appointed by seniority-cum-merit were accorded seniority based on

the date of appointment as LRIs and were not allowed seniority based on the year of vacancy;

- (iv) The right to seniority based on the year of vacancy flows statutorily from the provisions of the 1972 Rules and the 2001 Rules. These rules provide for 'deemed appointment', a 'deemed date of officiation / experience' and for promotions that relate back to the year of vacancy;
- (v) The seniority-cum-merit promotees filed a petition before the Rajasthan Civil Services Appellate Tribunal¹¹ which allowed them the benefit of seniority based on the year of vacancy. The State of Rajasthan accepted the judgment of the Tribunal as a result of which the above promotees were, in the final list of seniority prepared in 2016, accorded seniority based on the year in which the vacancy arose;
- (vi) The appellants were however denied the benefit upon which they represented to the Board on 4 September 2015, claiming parity under Article 14 of the Constitution in the computation of seniority based on the year in which their vacancies arose;
- (vii) The appellants were compelled to file a Writ Petition before the High Court in which the following issues arose for consideration:

"A. Whether or not filling up of vacancies by seniority-cum-merit and competitive examination are both subsets of appointment by promotion; and

B. If the answer to A is in the affirmative, whether the appellants too are entitled to promotion from the year in which the vacancies arose on account of the

¹¹ "Tribunal"

interplay between the Rules of 1957, Rules of 2001 and the Rules of 1972.”

- (viii) Appointment by competitive examination under Rule 284 is also a method of promotion. This position was accepted by the judgment of the learned Single Judge and by the Division Bench in appeal upon analysing the provisions of Rule 284;
- (ix) On three different occasions, the Department of Personnel of the State Government accepted the position that selection in the case of 20 per cent of the vacancies on the basis of a limited competitive examination is a method of promotion;
- (x) As to the interplay between the Rules of 1957, 1960 (as repealed and substituted by the 2001 Rules) and 1972, the Single Judge correctly held that the 1957 Rules do not provide for a situation where the selections under Rule 284 are not held in the year in which the vacancies arose. Rules 347-A and 347-B were introduced to obviate such a situation by making the 1960 and 1972 Rules applicable;
- (xi) The Division Bench of the High Court held that since Rule 347-B begins with a non-obstante clause, the question of incorporating a principle from some other rule would not arise if on that subject a parent rule holds the field. This conclusion of the Division Bench is flawed because:

- (a) Rule 347-B brought about the incorporation of the 1972 Rules as a result of which effect has to be given to the latter, even if there is any inconsistency with the 1957 Rules;
 - (b) The 1957 Rules are silent on the determination of vacancies and holding of year-wise promotions;
 - (c) The 1972 Rules introduced an obligation to determine year-wise vacancies and to hold year-wise promotions. Where the appointing authority has failed to carry out its obligations to do so, it has to issue an order for deemed appointment from the date on which the vacancy arose. The selections, when held, would be with reference to the year in which the vacancies arose; and
 - (d) The 2001 Rules introduced a deeming fiction of service / experience from the date on which the vacancy arose.
- (xii) The 1957 Rules are silent in regard to the above conditions of service and hence, full effect has to be given to the legal fiction, as a result of Rules 347-A and 347-B. The object of the rule making authority in creating the legal fiction is to neutralize the adverse effect caused by a lapse of the government to carry out its obligations of making year-wise determinations of vacancies and appointments;
- (xiii) As a result of the deeming fiction, persons promoted belatedly, are deemed to be appointees of an earlier date, carrying experience from an earlier date. By virtue of the fiction, such persons are deemed to be holding the post of LRI

from the date on which they were entitled to hold the post in terms of the accrual of vacancy. This position has been accepted by the Tribunal and was given effect to by the Board;

- (xiv) Rule 284 provides for two streams of promotion: once promoted, promotees of both streams constitute one class. Both the Tribunal and the State Government found that by virtue of Rule 347-A and Rule 347-B, promotees on the post of LRI are entitled to have their seniority computed and have the benefit of seniority and experience from the date of occurrence of the vacancy. The State cannot accord differential treatment to two different streams of promotees since this would be subversive of Article 14;
- (xv) The amendment to Rule 171-A on 8 October 2014 is clarificatory. The judgment of the Tribunal has been acted upon and attained finality. Rule of law principles require that the appellants should not be denied the benefit;
- (xvi) The object of Rules 347-A and 347-B is to bring about a uniformity in the conditions of service for all members of the subordinate staff across the State. The appellants cannot be denied the benefit of the 2001 Rules;
- (xvii) Depriving them of the benefit of the Rules of 1972 and 2001 would make the rights of the appellants dependent on the fortuitous event of the date on which the selection process was held; and
- (xviii) The State cannot escape the consequence of not holding timely selections and delaying them for years on an end.

19 Opposing the above submissions, Dr Manish Singhvi, learned Senior Counsel appearing on behalf of the State of Rajasthan submitted:

- (i) The 1972 Rules have to be read in conjunction with the 1957 Rules. The 1972 Rules make a reference to a DPC. The concept of a DPC applies to promotions made on the basis of seniority-cum-merit and cannot be equated with competitive examinations. The rights of persons who are eligible or those who are recommended by the DPC in a particular year are crystalised. The importance of the 1972 Rules is that the delay in convening a DPC should not deprive persons who are otherwise eligible of their legitimate rights. In contrast, the holding of a competitive examination is uncertain. The year of vacancies has no correlation with the competitive examination. Consequently, the deeming fiction relatable to the year of vacancy is confined to persons whose rights have crystalised in the year when the DPC was required to have been convened and will not extend to persons selected through competitive exams. Even the promotees of 2013 have been given substantive appointments from the date of appointment and not from the year of vacancy;
- (ii) The 2001 Rules do not apply *per se* for the following reasons:
 - (a) The 2001 Rules do not expressly state that the 1960 Rules have been repealed;
 - (b) The 2001 Rules are not general in nature so as to fall within the purview of entry 7 of Rule 347-A. The 2001 Rules apply to services specified in the schedule thereto and posts of Inspectors / Naib

Tehsildars / Patwaris are not part of the posts specified in the schedule.

The 2001 Rules are only meant to cover residuary cadres / services which are not already covered by the state / subordinate services;

- (c) The 1960 Rules have been repealed, and the 2001 Rules cannot be termed as rules providing for general conditions of service;
- (d) The 2001 Rules do not apply to regular / state / subordinate / ministerial services which are governed by their own rules. Rule 4(g) of the repealed 1960 Rules was all encompassing and covered posts under the Rajasthan Civil Services (Classification, Control and Appeal) Rules 1958¹². The CCA Rules 1958 covered all appointments in subordinate / state services. The 2001 Rules are confined to specific categories mentioned in the schedule; and
- (e) Even if the 2001 Rules apply, the scheme of those rules does not contemplate a competitive examination as being a method of promotion. Part IV of the 2001 Rules deals with the procedure for direct recruitment by competitive examinations, while Part V pertains to promotion. The case of the appellants will not fall within Part V. In the absence of any statutory basis, the appellants cannot claim seniority or promotion from an anterior date. Rule 347-A is subject to the provisions contained in the 1957 Rules and hence, if any field is occupied, the Rules of 1960 and 2001 shall not apply. Rule 171-A which provided at

¹² "CCA Rules 1958"

the material time for seniority on the basis of continuous officiation held the field.

- (iii) The amendment to Rule 171-A which replaced the word “continuous officiation” with the expression “recruitment year of promotion”, was effected in October 2014, whereas the present controversy relates to 2012-13. Continuous officiation refers to a person actually working on the post and cannot incorporate the concept of a deeming experience or retrospective claim of seniority. The State Government has treated even the promotees on the basis of seniority-cum-merit from the date of appointment. The situation has altered only after the amendment of Rule 171-A in October 2014;
- (iv) The requirement of determining year-wise vacancies does not by itself lead to the grant of seniority from the date of vacancy. If the State ignores one source of recruitment for an unreasonable period of time or if its action is *mala fide*, the court can issue a writ of mandamus to make recruitments from the ignored source of recruitment. This was the situation in **Jagdish Ch. Patnaik v State of Orissa**¹³ (“**Jagdish Ch. Patnaik**”). In the present case, no *mala fides* have been urged and the State simply clubbed together vacancies for three years to hold a competitive examination; and
- (v) The service jurisprudence emanating from Articles 14 and 16 of the Constitution provides that seniority has to be reckoned from the date of the substantive appointment. However, if a statutory rule so provides, it can be reckoned from a retrospective date. Retrospective operation of seniority,

¹³ (1998) 4 SCC 456

however, has to be confined to appointment by promotion and cannot extend to competitive examinations. Candidates in competitive examinations cannot be given seniority from a retrospective date because they are not borne on the cadre. Candidates drawn from the source of competitive examinations are borne on the cadre from the date of substantive appointment after undergoing probation and confirmation. In the present case, the appellants were selected by open competitive examination from Patwaris for the post of LRI. If retrospective seniority was to be given from the date on which the vacancy arose, it would lead to a situation where a person who is not qualified to take the examination on the date when the vacancy arose would get seniority. In the present case, some persons were recruited by departmental examinations from the feeder cadre. The statutory rules did not envisage retrospective seniority from the date when the vacancy had arisen. The grant of seniority is not a facet of a fundamental right. Hence, there is no violation of a fundamental right when a person who takes a competitive examination is given seniority from the date of substantive appointment.

20 Supporting the submissions which were urged on behalf of the State of Rajasthan, Mr P N Misra and Mr Manoj Swaroop, learned Senior Counsel appearing on behalf of the contesting respondents submitted:

- (i) Recruitment under clause (i) and (ii) of Rule 284 of the 1957 Rules is from two different streams: clause (i) provides for seniority-cum-merit, while clause (ii)

provides for a competitive departmental examination. The appellants are governed by Rule 284(ii) and only those amongst the serving Patwaris who qualify and meet the requirements under Rule 286 could appear for an open competitive examination held pursuant to Rules 286-287. After completing their training such persons have to undergo probation. Rule 298(iii) specifies that persons who obtain the diploma are not immediately entitled for appointment since appointment can be granted when vacancies occur on the basis of seniority;

- (ii) Rule 171-A (2) embodies the criteria of continuous officiation. The private respondents are governed by Rule 284(i). They faced a DPC in 2012-13 and the recruitment year for them was 1 April 2013. The private respondents are not claiming seniority from the year of vacancy. Though for some of them the DPC was 2009-10, their date of joining as LRI was in the year 2013 as a result of which they were given promotion only with effect from 1 April 2013;
- (iii) Rule 347-A of the 1957 Rules commences with the expression “except as otherwise provided in these rules”. Rule 7 of the 2001 Rules provides three sources of recruitment namely - (i) direct recruitment; (ii) promotion; and (iii) transfer. Chapter V of the 2001 Rules deals with the procedure for promotion. The 2001 Rules provide for promotion on the basis of a DPC and do not contemplate a selection of candidates by a limited competitive examination. The 2001 Rules will not be applicable to LRIs appointed under the 1957 Rules and seniority has to be fixed under Rule 171-A;

- (iv) The 1972 Rules apply to promotions which are made on the recommendation of a DPC hence, if the rules are construed in their entirety, it is evident that those rules are applicable to promotions made on the recommendation of a DPC and not to those selected on the basis of a department examination;
- (v) The appellants cannot claim seniority from a date on which they were not borne on the cadre. The appellants appeared in the competitive exam in 2013 for advertisements issued in 2011 and 2013. They are not entitled to claim seniority, as they seek to do, from the year of vacancy; and
- (vi) It is well settled that promotion takes effect from the date of promotion and not from the date of the occurrence of the vacancy or the creation of a post.

The above submissions have been reiterated by the other counsel. We now proceed to consider the submissions.

21 Part IV of the 1957 Rules provides for a training school for Patwaris and Qanungos. Among the Chapters comprised in Part IV is Chapter III which deals with admission, training and examination of candidates to the Patwari school. Rule 284 of the 1957 Rules contemplates selection of candidates for admission to the school from two sources. The first, comprised in clause (i) is the promotion of Patwaris of the Revenue and Land Records Departments through seniority-cum-merit. The second source in clause (ii) is a competitive examination which is restricted to serving Patwaris of the Revenue (Land Records) Department who fulfill the conditions of eligibility in Rule 286. The quota for promotion on the basis of seniority-

cum-merit is 80 per cent, while that for candidates selected on the basis of a competitive examination is 20 per cent. Candidates seeking selection need to fulfill qualifications prescribed for selection in Rule 286. The requirements of eligibility mandate, among other things that the candidate must have five years' experience as a Patwari. After completion of the training, a candidate will be granted a diploma of the training school and a list of successful candidates is maintained in order of seniority based on the aggregate of marks obtained. The grant of a diploma does not entitle a candidate to immediate appointment but makes the candidate eligible to be considered as and when a vacancy arises, on the basis of seniority. On the completion of a probationary period of one year, the candidate is eligible for being confirmed in terms of Rule 299.

22 Rule 284 indicates that there are two sources of selection on the basis of which admission to the training school is made namely: (i) promotion; and (ii) a departmental examination for in-service Patwaris. The departmental examination is, as described in-service jurisprudence, a limited departmental examination since within-service candidates who are working as Patwaris with the requisite experience and who fulfill the conditions of eligibility can only be considered under Rule 284(ii) read with Rule 286. Rule 284(ii) is evidently not a source of open direct recruitment since only in-service candidates fulfilling the conditions of eligibility can apply. The history of Rule 284 indicates that initially there was a 50 per cent quota in 1977 for direct recruitment while the balance was for seniority-cum-merit. In 1981, promotion

on the basis of seniority-cum-merit was enhanced to 65 per cent, while 15 per cent was to take place on the basis of a limited competitive examination among serving Patwaris. As a consequence, the quota for direct recruitment was reduced to 20 per cent. In 1985, the method of direct recruitment was altogether abolished resulting in an enhancement of the quota for seniority-cum-merit promotion to 80 per cent while the balance of 20 per cent was through a limited departmental examination. This history clearly indicates a progressive dilution of the quota that was prescribed for direct recruitment until it was eventually abolished altogether. In consequence, selection within the meaning of Rule 284 is governed by a promotional quota (80 per cent) based on seniority-cum-merit and a quota for candidates passing a limited department examination (20 per cent) drawn from those who are serving as Patwaris.

23 Now, it is in the above context, that both the Single Judge as well as Division Bench in appeal came to the conclusion that the examination which is confined to candidates drawn from the feeder category would essentially be a case of accelerated promotion. The learned Single Judge held:

“...the very fact that at one stage there were three sources for selection / appointment, which included that direct recruitment, regular promotion and accelerated promotion is sufficient to come to a conclusion that selection through competitive examination cannot be equated with direct recruitment...”

The Single Judge held that the quota of 20 per cent is to be filled up by accelerated promotion and merely because a competitive examination for entry to the training school is envisaged that does not change the status of the selection. Though, the streams are different, essentially, the selection is by way of promotion. The Division Bench accepted this analysis of the learned Single Judge, holding:

“...An examination restricted only to the feeder category prescribed for promotion by seniority-cum-merit, would therefore essentially be a case of promotion by way of selection or accelerated promotion as learned single judge has rightly put and not direct recruitment...”

The Division Bench noticed that Rule 299 of the 1957 Rules (in the context of the completion of the probationary period) provides that promotees of the same year will rank senior to the direct recruits from serving Patwaris of the same year. The mere use of the expression “direct recruitment” in Rule 299 was held not to render the source comprehended in Rule 284(ii) as a source of direct recruitment. For the purpose of the present proceedings, we accept the correctness of this view which has been adopted both by the Single Judge and by the Division Bench. This is also the consistent view of the Department of Personnel of the State Government. Hence, we hold that the limited departmental examination for in-service Patwaris under Rule 284(ii) is a means of accelerated promotion. Rule 284 provides for selection by promotion through two streams: one by seniority-cum-merit and the other on the basis of a limited departmental examination for in-service Patwaris.

24 Now it is in this context, that it become necessary to evaluate the interplay between the Rules of 1957 more particularly, Rules 171-A, 347-A and 347-B with the Rules of 1960, 1972 and 2001. Rules 347-A and 347-B of the 1957 Rules were introduced by amendment on 22 September 1977. Rule 347-A stipulates that the pay, allowances, pension, leave and other conditions of service shall be regulated by the rules, as amended from time to time enumerated in the several entries which follow. Among them are other rules for the time being in force, made under the proviso to Article 309 of the Constitution prescribing the general conditions of service. Any other general order or amendment in the 1960 Rules by the Department of Personnel is to apply *mutatis mutandis* unless there is an order to the contrary issued by the government. However, Rule 347-A indicates that the provisions of the enumerated rules do not have overriding effect since the opening words contain the phrase “except as otherwise provided in these rules”. Where a specific provision is made in the 1957 Rules, that will hence prevail.

25 The 1960 Rules governed the recruitment and conditions of service of persons appointed to subordinate service posts in various departments, except where there existed separate service rules. Rule 2 provided:

“2. Scope. - These rules shall govern the recruitment and other conditions of service in respect of persons appointed to the subordinate service posts in the various departments other than posts regarding which separate service rules have been promulgated or may be promulgated in future.”

Rule 9 of the 1960 Rules required the appointing authority to determine the actual number of vacancies occurring during the financial year, on 1 April every year. Under Rule 9, where a post is filled up by more than one method prescribed in the rules or schedule, an apportionment of vacancies to every such method was to be done for maintaining the required proportion. The appointing authority was also duty bound to determine the year-wise vacancies of earlier years, which were required to be filled in by promotion, if such vacancies were not determined and filled earlier in the year in which they were required to be filled in. Rule 9 in specific terms contemplated a year-wise determination of vacancies, allocation of vacancies to different methods of appointment and the determination of vacancies of earlier years which were not filled in the relevant year. However, Rule 9 did not, in express terms, provide for deemed seniority or a deemed date of promotion.

26 Rule 347-A contemplates that the conditions of service would be governed by the provisions contained in the rules enumerated (including the 1960 Rules) unless otherwise provided in the 1957 Rules. Rule 171-A was such a provision contemplated by the opening words of Rule 347-A. Until it came to be amended in October 2014, Rule 171-A(2) specifically contemplated that the seniority of the LRIs will be determined from the date of their continuous officiation on the post in the land records department or any other equivalent post provided that such officiation was not fortuitous or ad hoc in nature. After the amendment, Rule 171-A contemplates

that the seniority of Inspectors shall be determined on the basis of the recruitment year of promotion. The amendment took effect in October 2014.

27 Mr Paras Kuhad, learned Senior Counsel is justified in his submission that the 1957 Rules did not make a provision specifically for a year-wise determination of vacancies and that such a provision was embodied in the 1960 Rules. The difficulty in accepting the sequitur (as learned Counsel portrayed it) of this submission lies in the fact that Rule 171-A(2) prior to its amendment expressly incorporated the principle of continuous officiation as the basis for determining seniority of LRIs. This principle, which is specifically embodied in Rule 171-A(2) cannot stand overridden by any provision to the contrary contained in the 1960 Rules. This is for the reason that Rule 347-A expressly stipulates that where there is a specific provision contained in the 1957 Rules, that provision will govern.

28 On 2 March 2001, the 2001 Rules were notified under the proviso to Article 309 of the Constitution. Rule 2 defines the scope of the 2001 Rules:

“2. Scope. - These rules shall govern the recruitment and other conditions of service in respect of persons appointed to the subordinate service posts in the various departments other than post(s) regarding which separate service rules have been promulgated or may be promulgated in future.”

Rule 3(h) defines the expression “member of service”:

“(h). ‘Member of Service’ means a person appointed in a substantive capacity to a post in the service under the provisions of these rules or the rules or orders superseded by rule 48 and includes a probationer.”

Rule 6 defines the constitution of the service:

“6. Constitution of Service-the Service shall consist of-

- (a) all person holding substantively the post(s) or recruited to the Subordinate Service post(s) specified in the Schedule or orders issued by the Government or the Appointing Authority before the commencement of these rules;
- (b) all persons recruited to the service in accordance with the provisions of these rules, except an urgent temporary appointment.”

Rule 7 provides for the method of recruitment:

“7. Method of recruitment:- (1) Subject to the provisions herein after contained in these rules, recruitment or appointment to post(s) in the service shall be made by the following methods in the proportion as indicated in the Schedule:-

- (i) by direct recruitment in accordance with the provisions contained in part-IV of these rules;
- (ii) by promotion in accordance with the provisions contained in part-V of these rules;
- (iii) (a) by transfer from amongst the person(s) holding equivalent post(s) in other Department.

provided that if the post(s) to which transfer is proposed to be made within the purview of the Commission. Such person should have already been approved by the Commission on such equivalent post.

(b) by transfer of persons from any institution that has been taken over by the State Government with the condition to suitably absorbed its staff:..."

Rule 7 contemplates three modes of recruitment, namely:

- (i) Direct recruitment in terms of Part IV;
- (ii) Promotion in terms of Part V; and
- (iii) Transfer.

29 Part IV of the 2001 Rules lays down the procedure for direct recruitment from Rules 22 to 33. Part V provides for the procedure for recruitment by promotion. Rule 13 requires a determination of the actual number of vacancies occurring during a financial year as on 1 April every year. Where a post is filled in by a single method then the vacancies as determined shall be filled in by that method. Where more than one method is prescribed posts are filled by apportionment of vacancies. Rule 35 applies to promotions which are carried out by a departmental promotion committee constituted under Rule 34. Rule 35(6) requires the committee to consider the cases of persons who would have been eligible in the year to which the vacancy relates, irrespective of the year in which the meeting of the committee is held. Such promotions would be governed by the criteria and procedure applicable in the year to which the vacancy relates and the service / experience of the incumbent who is promoted shall be counted for promotion to a higher post for any period during which the candidate has not actually performed the duties of the post. Where a limited

competitive examination is being held for accelerated promotion, Rule 35 has no application. The procedure for recruitment in Part V of the 2001 Rules does not comprehend a situation involving a limited competitive examination for accelerated promotion. Rule 48 which is the repeal and savings provision stipulates that all rules and orders relating to matters covered by those rules and in force immediately before the commencement of the rules are repealed. The 2001 Rules contains a schedule and as we have seen earlier, Rule 6(a) provides that the service shall consist of persons holding substantive posts or persons recruited to subordinate service posts or persons specified in the schedule, besides persons recruited in accordance with the provisions of the rules.

30 It is evident from Part V of the 2001 Rules more particularly, the rules governing promotion contained in Rules 34 and 35 that the deeming fiction envisaged in Rule 35(6) applies to promotions made under the auspices of a DPC. In the case of such promotions, Rule 35 mandates that the committee constituted under Rule 34 must consider the cases of persons who were eligible in the year to which the vacancy relates irrespective of the year in which the meeting of the committee is held. The underlying rationale for Rule 35(6) is that on the determination of year-wise vacancies, rights are crystalised with reference to the year in which the vacancy has arisen. Consequently, the delay on the part of the DPC in convening its meeting should not result in a prejudice to those candidates who were eligible for promotion and ought to have been promoted but were not

considered with reference to the year in which the vacancy arose. This principle in Rule 35(6) is in the nature of a deeming fiction. Undoubtedly, once a deeming fiction comes into being, full effect must be given to its ambit. Equally, a deeming fiction can apply to the extent to which and in a situation where the law mandates that it be applied. In the present case, it is evident that the deeming fiction which applies in the context of a DPC having been convened beyond the year in which the promotional vacancy arose has no application to candidates who are recruited on the basis of a competitive examination for the grant of accelerated promotion. There is a fundamental reason why the deeming fiction cannot be extended to the situation implicated in Rule 284(ii). In order to appear in the competitive examination contemplated by Rule 284(ii), a candidate must fulfill the conditions of eligibility prescribed in Rule 286. Rule 286 stipulates that in-service Patwaris must have a minimum service of five years before they can appear at the competitive examination under Rule 284(ii). Conferment of a deemed seniority may result in a situation where a candidate secures seniority with effect from an anterior date on which he or she was neither borne on the cadre nor was qualified. Such a consequence would be impermissible, at least in the absence of an express statutory provision to that effect.

31 A consistent line of precedent of this Court follows the principle that retrospective seniority cannot be granted to an employee from a date when the employee was not borne on a cadre. Seniority amongst members of the same grade

has to be counted from the date of initial entry into the grade. This principle emerges from the decision of the Constitution Bench of this Court in **Direct Recruit Class II Engineering Officers' Association v State of Maharashtra**¹⁴. The principle was reiterated by this Court in **State of Bihar v Akhouri Sachindra Nath**¹⁵ and **State of Uttaranchal v Dinesh Kumar Sharma**¹⁶. In **Pawan Pratap Singh v Reeven Singh**¹⁷, this Court revisited the precedents on the subject and observed:

“45. ... (i) The effective date of selection has to be understood in the context of the service rules under which the appointment is made. It may mean the date on which the process of selection starts with the issuance of advertisement or the factum of preparation of the select list, as the case may be.

(ii) Inter se seniority in a particular service has to be determined as per the service rules. The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from different sources. Any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.

(iii) Ordinarily, notional seniority may not be granted from the backdate and if it is done, it must be based on objective considerations and on a valid classification and must be traceable to the statutory rules.

(iv) The seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant service rules. It is so because seniority cannot be given on retrospective basis when an employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime.”

¹⁴ (1990) 2 SCC 715

¹⁵ 1991 Supp (1) SCC 334

¹⁶ (2007) 1 SCC 683

¹⁷ (2011) 3 SCC 267

This view has been re-affirmed by a Bench of three judges of this Court in **P Sudhakar Rao v U Govinda Rao**¹⁸.

32 During the course of the hearing, learned Counsel appearing on behalf of the appellants placed reliance on a decision of a two judge Bench of this Court in **Jagdish Prasad v State of Rajasthan**¹⁹ (“**Jagdish Prasad**”). The issue in that case pertained to promotions from the post of District Transport Officer²⁰ to the post of Motor Vehicle Inspector. Prior to April 1992, candidates were required to pass a qualifying examination for the post of DTO but by an amendment, the requirement was deleted. Under Rule 10 of the Rajasthan Transport Service Rules 1979²¹, the appointing authority was required to make a year-wise determination of vacancies and to make an apportionment to each method prescribed for filling up the posts. In doing so, the authority was to determine the vacancies of earlier years which were required to be filled up by promotion but were not in fact filled in that year. Rule 24 of the 1979 Rules contains sub-rule (11) which is *pari materia* with Rule 35(6) of the 2001 Rules. Under the 1979 Rules, 50 per cent of the vacancies were allocated for direct recruitment and 50 per cent for promotion. This Court noted that the 1979 Rules postulated merit to be the criteria for promotion to the higher posts. Right from 1983-84 until 1993-94, no examination was conducted. Faced with the question of delay in holding the qualifying examination, this Court observed:

¹⁸ (2013) 8 SCC 693

¹⁹ (2011) 7 SCC 789

²⁰ “DTO”

²¹ “1979 Rules”

“29. In light of this, we now come to the conduct of the Government which we cannot but help to comment upon. Right from 1983-1984 till 1993-1994 no examination has been conducted by the appropriate authority despite the fact that they also issued notifications for holding exams on a few of these occasions. If there was a representation from the Rajasthan Transport Inspectors' Union, it cannot be considered as a sufficient cause or reason for not holding the examinations for more than ten years and causing serious prejudice to the candidates who might have been sufficiently meritorious to qualify in the exams and be considered for promotion to 50% of the posts under the promotion quota. It is a matter of regret that a Government can take such a stand before a court of law and expects the Court to accept such a submission. It is *ex facie* untenable. Once the rules stand clear, the authority concerned is expected to act in accordance with law and not to defeat the law. One who defeats the law by his unjustifiable and unsustainable acts is liable for the consequences of such default. We fail to understand why the Government and its entire hierarchy had shut its eyes to this gross violation of statutory rules over such a long period.”

The process of selection was held to be in violation of the statutory rules. In this background, this Court noticing the illegality in the process, issued directions for holding a fresh process of selection.

33 **Jagdish Prasad** is a decision which has been rendered in a situation where the 1979 Rules applicable to the Transport department contained a specific provision for considering the case for promotion of persons who are eligible in the year to which the vacancy relates and who could not be considered as a result of the failure of the DPC to convene. The decision related to a situation where the State Government had acted arbitrarily and even *mala fide* in failing to hold the qualifying

examination for a decade on the specious ground that there was a representation from the union. The action of the State was held to be unsustainable because it was designed to defeat the law. This distinguishing feature is absent in the present case.

34 In the present case, we have dealt with the issue of the applicability of the 1960 Rules in the context of determining the principle of seniority. We have held that in view of the opening words of Rule 347-A, the provisions contained in the 1960 Rules would have to give way and be subject to Rule 171-A(2) which provided for determining seniority on the basis of continuous officiation. In the face of Rule 171-A(2) as it stood prior to amendment, it is not possible to apply a deemed date for determining seniority based on the year of vacancy. Rule 171-A(2) rules out the grant of seniority with effect from a date anterior to the date on which the employee is borne on the cadre.

35 But the submission which now needs to be analysed is whether a different result would follow from the application of Rule 347-B of the 1957 Rules. Rule 347-B, as we have noted, is prefaced with a non-obstante provision. Consequently, conditions of service which are governed by the rules referred to in the entries of Rule 347-B will govern notwithstanding anything contained in the 1957 Rules. Among them is an entry pertaining to the 1972 Rules. Hence, it is necessary to consider the applicability of the 1972 Rules. Rule 2 contemplates a situation where the service rules regulating recruitment and conditions of service made under the

proviso to Article 309 of the Constitution provide for recruitment by both direct recruitment and promotion. Where the promotion quota of a previous year cannot be filled in due to the absence of a DPC recommendation, the appointing authority is to determine the number of vacancies required to be filled up by promotion with reference to the year when the vacancies were required to be filled up. In such a situation, upon a determination of the vacancies by the appointing authority, the DPC is required to convene within a stipulated period. Upon the recommendations of the DPC, the appointing authority must make appointments to promotion quota vacancies relevant to the year in question. Where a vacancy relates to a year earlier than the year in which the appointment has been made, the order of appointment has to be modified so as to take effect from the year in which the promotion is deemed to have been made. A plain reading of the 1972 Rules indicates that they envisage a situation where recruitment is made both by direct recruitment and promotion and the promotional quota is not filled up in the absence of a DPC recommendation. On its terms, Rule 2 of the 1972 Rules has no application to a situation such as the present which is governed by Rule 284 of the 1957 Rules. Under Rule 284, there is no direct recruitment at all. Rule 2 of the 1972 Rules applies in a situation where a service rule regulating recruitment “provides for recruitment *by both direct recruitment and promotion*”. In the present case, *ex facie* Rule 284 of the 1957 Rules is not a provision falling in that category since there is an absence of a service rule requiring recruitment by direct recruitment and promotion. The 1972 Rules have no application. Rule 347-B of the 1957 Rules will hence not come to the aid of the appellants.

36 The situation, as we have noted has been altered by the rule making authority which amended the provisions contained in Rule 171-A(2) of the 1957 Rules. As a result of the amendment, sub-rule (2) came to be substituted with effect from 8 October 2014. Post amendment, the seniority of LRIs has to be determined on the basis of the recruitment year of promotion. The provision for continuous officiation as embodied in Rule 171-A(2) prior to the amendment was to the contrary. A deliberate departure has been made in the rules which were modified on 8 October 2014. We cannot accept the submission that the amendment was clarificatory in nature. The present case relates to the exercise conducted prior to the amendment of Rule 171-A(2).

37 For the above reasons, we are of the view that the Division Bench of the High Court was justified in coming to the conclusion, though for the reasons which we have indicated, that the claim for seniority with reference to the date of the accrual of the vacancy will not be maintainable merely on the ground that no competitive examination was held in the years in which the vacancies had arisen. The view taken by the Division Bench of the Rajasthan High Court is in accord with the principles of law enunciated in the decisions of this Court and consistent with the statutory rules as they held the field at the material time.

38 For the above reasons, we find no merit in the appeals. The appeals are accordingly dismissed. There shall be no order as to costs. Pending application(s), if any, shall stand disposed of.

.....J.
[Dr Dhananjaya Y Chandrachud]

.....J.
[Indira Banerjee]

New Delhi;
August 21, 2019.