CASE NO.:
Writ Petition (civil) 43 of 1998

PETITIONER:
CHANDRA PRAKASH AND ORS.

RESPONDENT:
STATE OF U.P. AND ANR.

DATE OF JUDGMENT: 04/04/2002

BENCH:
S.P. BHARUCHA CJ & R.C. LAHOTI & N. SANTOSH HEGDE & RUMA PAL & ARIJIT PASAYAT

JUDGMENT:
JUDGMENT

2002 (2) SCR 913

Writ Petition (C) No. 43 of 1998.
WITH
W.P.(C) Nos. 237, 220, 276, 532, 539, 547/98, 176, 229 and 299/99 and I.A. Nos. 1, 2 and 5 to 24.

The Judgment of the Court was delivered by :

SANTOSH HEGDE, J. A 3-Judge Bench of this Court by an order dated 17.8.2000, referred the abovenoted writ petitions for consideration by a Bench of five Judges by the following order :

"We have heard learned counsel. It appears that a Bench of two learned Judges of this Court has taken a view dissimilar to that taken by a Bench of three learned judges. It appears, therefore, that these matters should be heard and disposed of by a Bench of five learned Judges and, to the extent possible, with expedition."

Brief facts necessary for the disposal of this case are as follows :

In the U.P. Provincial Medical Services (PMS) for a considerable length of time, regular appointments were not made and with a view to meet the need for doctors, appointments were being made on a temporary basis but in consultation with the State Public Service Commission. These appointments were continued for decades together without any interruption. In 1979, the respondent-State purported to regularise the services of these temporary doctors by the promulgation of U.P. Regularisation of Ad-hoc Appointments (On Post within the purview of the Public Service Commission) Rules, 1979 (for short 'the Regularisation Rules'), and sought to give these appointees seniority only from the date of their such regularised appointment under the Rules.

In the meanwhile, in the year 1972 pursuant to the advertisements issued by the Public Service Commission, the said Commission made selections to fill the vacancies in the PMS and recommended the names of certain selectees. Such selections and recommendations seem to have been made in instalments between the year 1972 and 1979. These selections made by the Public Service Commission were originally not acceptable to the State Government but when they became acceptable because of certain judicial pronouncements or otherwise, the question of inter se seniority arose between the temporary doctors originally appointed and the doctors appointed through the Public Service Commission. It was the stand of the temporary doctors that they were appointed to permanent vacancies in consultation with the PSC and having continued for a considerable length of time in service, their original appointments ought to be deemed as regular, and they should be

given seniority from the date of their initial appointments. This claim of the temporary doctors being rejected, three temporary doctors approached the Allahabad High Court in three separate writ petitions; Civil Misc. W.P. No. 20408/88 filed by Dr. H.C. Mathur was one such petition. The High Court of Allahabad clubbing the three petitions, by its order dated 26.4.1991, upheld the claim of the temporary doctors and held that their seniority should be counted from the date of their initial appointment in the PMS cadre and that they are also entitled to all the service benefits which are due to them after so fixing their seniority.

The State of U. P. selectively filed an SLP against the judgment of the High Court in W.P. No. 20408/88, that is in the case of Dr. H. C. Mathur. The said matter came up before this Court in SLP (c) No. 13840/92 before a 3-Judge Bench of this Court which by its order dated 24.11.1992 held thus :

"We have heard Mr. D.V. Sehgal, Senior counsel appearing for the State of U.P. The respondent in this Special Leave Petition has served .the State of U.P. for over 30 years, and he was regularised after he had put in more than 20 years of service. Relying upon the Uttar Pradesh Regulation of Ad-hoc appointments (On posts within the purview of the Public Service Commission) Rules, 1979, the State of U.P. declined to give him the benefit of 20 years of service towards seniority. The

Allahabad High Court allowed this Writ Petition and granted him the benefit of the whole of the period towards seniority. We see no infirmity in the judgment of the High Court. We agree with the reasoning and the conclusions reached therein. Special Leave Petition is dismissed."

Thus, the judgment of the High Court upholding the right of the temporary doctors to count their seniority from the date of their initial appointment came to be confirmed. It is on record that subsequent to that a number of other similarly situated temporary doctors also filed similar petitions and obtained similar relief out of which some cases were brought to this Court by the state of U.P. like in W.P. No. 6227/81 which was decided by this Court in SLP (c) cc No. 18791/92 wherein the judgment of the High Court was again confirmed by a Division Bench of this Court on 21.1.1993.

During the pendency of some of the abovenoted petitions, it is seen from the record that some of the selectee doctors who were not given letter of appointment by the State Government, approached the State Service Tribunal seeking a direction that they be appointed in service in accordance with the selections and recommendations made by the Public Service Commission. The Tribunal on those petitions passed the following order:

"The references are allowed, the order of State of U.P. whereby it has cancelled the selection list submitted to it by the Public Service Commission, U.P. contained in G.O. No.l355/Child. 4-546/78 dated 13.3.84 is quashed being illegal, inoperative, null and void and the petitioners are declared entitled to get appointed subject of course to other considerations mention in the body of judgment, as medical officers in accordance with the said selection list of the commission and to get all the consequential service benefits. The opposite parties are directed to issue letter of appointment to the petitioners on the basis of selection list of 23.12.1997 within three months of this decision and also gave all the consequential service benefits."

The State of U.P. challenged the said order of the Tribunal by way of W.P. No. 7066/86 which was heard by the High Court along with other connected matters, and the High Court modified the order of the Tribunal in the following terms:

"In these circumstances, the directions issued by the claim Tribunal were totally justified. However, in view of fact the recruitment was made about 14 years earlier and the persons who were appointed on adhoc basis have been regularised during the last 12 years, it may not be proper to direct

the appointment of all the selectees at this stage. However, the claim of the petitioner who had been selected and are also working on adhoc basis shall be deemed to have been appointed on the date when the vacancies were first filled by the regularisation by virtue of being selected by the Public Service Commission and would be entitled to seniority and other benefits accordingly. The relief granted by the Tribunal shall stand modified to that extent."

It is seen from the above proceedings, the basic question involved in those matters before the Tribunal as well as before the High Court was in

regard to the inaction/refusal on the part of the State Government in not issuing appointment letters to the petitioners. While considering the said inaction of the Government in issuing appointment letters to those selectee doctors, the Tribunal held that those doctors were entitled to the relief sought for by them. However, the High Court while confirming the said order of the Tribunal confined the relief to only those persons who had approached the Tribunal.

' Against this judgment of the High Court, the State of U.P. came up in a batch of SLPs. in C.A. Nos. 4438-42 of 1995. It is in this batch of civil appeals that a 2-Judge of this Court by its order dated 23.3.1995 held: "It is settled law that all adhoc appointment made de-hors the rules do not confer any right to permanency or seniority. They acquire the right only from the date of their regular appointment according to rules. "While so declaring the law which affected the seniority of the temporary doctors who were appointed much earlier than the selectee doctors, the 2-Judge Bench though noticed the judgment of the 3-Judge Bench made in SLP (C) No. 14480/92, did not further discuss this judgment nor did it in specific terms distinguish/overrule that judgment but proceeded to take a view which was directly opposed to the view taken by the 3-Judge Bench. That order of 23.3.1995 came to be further modified by the same Bench in IA Nos. 16-20 etc. in C.A. Nos. 4438-42 of 1995 by its subsequent order dated 26.7.1996. By this order, the Court while holding that the benefits accrued to retired doctors should not be disturbed, held that the inter se seniority between the doctors recruited through the PSC and the doctors whose services were absorbed under the Regularisation Rules should be determined in accordance with Rule 7 of the said Rules which in effect also ran counter to the judgment of 3-Judge Bench. The 2-Judge Bench further upheld the contention of the selectee doctors that they could not be treated as

junior to the non-selectee (temporary doctors) and directed the State Government to give promotions in accordance with the Regularisation Rules referred to hereinabove. It is imperative to notice the fact that the two orders of the 2-Judge Bench of this Court were in appeals filed against the order of the High Court confirming the directions issued by the Service Tribunal in regard to appointment of certain selectee doctors and was not in regard to any petition wherein the inter se rights of the temporary doctors and selectee doctors were directly in issue unlike the case of Dr. Mathur decided by a 3-Judge Bench of this Court.

It is because of the consequent action taken by the State Government based on the directions issued by 2-Judge Bench of this Court in the above-referred case that the petitioners herein have preferred the above-noted writ petition under Article 32 of the Constitution. This Court issued 'rule' in this case on 24.4.1998, and during the course of hearing, a 3-Judge Bench of this Court on 4.2.1999 felt it necessary that all persons who are likely to be affected by the decision in these writ petitions, should be intimated of the pendency of these petitions, hence, it directed the State of U.P. to issue a notice in two daily newspapers setting out that these writ petitions are being heard before this Court and that those whose seniority is likely to be affected, are entitled to come before this Court and put forth their point of view, including all those persons who are governed by earlier court orders. A similar circular to this effect was also directed to be sent to all District Headquarters.

Pursuant to the above publication and Circulars, a large number of applications for impleadment/intervention were received and the same have been listed for orders along with the above writ petitions.

It is in this context, noticing the conflict between the judgments of the 3-Judge Bench and the 2-Judge Bench, this matter has been referred to a larger Bench.

Even though the writ petitions themselves have been referred to this larger Bench for final disposal, we are of the opinion that we should initially decide the question as to the existence of conflict between the judgments of the 3-Judge Bench, and the 2-Judge Bench, and the effect of such conflict, if any, and then decide whether the writ petitions should be finally decided by this Bench or not. In that view of the matter, we have heard learned counsel appearing for the parties to the limited extent of finding out whether there is any conflict between the judgment of 2-Judge Bench and that of 3-Judge Bench and if so, what is the effect of judgments dated 23.3.1995 and 26.7.1996 of the 2-Judge Bench.

On behalf of the writ petitioners, it was contended that the issue in regard to date of counting of seniority of temporary doctors having been concluded by the 3-Judge Bench decision of this Court in Dr. Mathur ’s case, the same could not have been in any manner, varied or altered to the detriment of that class of doctors who were similarly placed as Dr. Mathur because that judgment declared the rights of not only Dr. H.C. Mathur but also that of the class of doctors similarly situated. They also contend that application of Rule 7 of the Regularisation Rules was considered in Dr. Mathur’s case, and was held to be inapplicable by the High Court which view was confirmed by the 3-Judge Bench of this Court, therefore, the 2-Judge Bench could not have held that the said rule is applicable while counting the seniority of the temporary doctors. This argument is based on the doctrine of binding precedents which requires that a judgment of a larger Bench should not be overruled or differed from by a Coordinate Bench, much less by a Bench of lesser strength. It is stated that the judicial discipline apart, the judgments of this Court have clearly laid down that a Coordinate Bench or a Bench of lesser strength cannot overrule a decision rendered earlier by another coordinate Bench or a Bench of larger strength. Reliance was placed on the following judgments of this Court:

Union of India and Anr. etc. v. Raghubir Singh (dead) by LRs. etc., [1989] 2 SCC 754 and Pradip Chandra Parija and Ors. v. Pramod Chandra Patnaik and Ors., [2002] 1 SCC 1. It is also contended by the writ petitioners herein that the order of the 2-Judge Bench was made without issuing notice to the affected parties.

Per contra, learned counsel appearing for the respondents-applicants, contend that there is no conflict between the views taken by the 3-Judge Bench and the 2-Judge Bench (supra). They submitted that, as a matter of fact, the subsequent orders of the 2-Judge Bench are more in the nature of clarification than conflicting. They, however, agree that if there is any conflict then such view of the 2-Judge Bench cannot be sustained.

We will now proceed to consider whether there is in fact any conflict between the two sets of judgments. In this process, we must bear in mind the fact that the judgment of this Court in Dr. Mathur’s case was a confirming judgment wherein this Court upheld the findings of the High Court by a reasoned order though brief. Therefore, it becomes necessary to notice the basis of the judgment of the High Court which was under appeal before this Court in Dr. Mathur’s case. In the said batch of writ petitions filed before the High Court including that of Dr. Mathur, the High Court held that appointments of temporary doctors were made against substantive vacancies which had fallen vacant due to non-availability of doctors. It also held that the eligibility of the writ petitioners therein for being

appointed as PMS-II was not in dispute. It further held that the petitioners therein held the necessary qualification for regular appointment. From the records available before it, the High Court came to the conclusion that the petitioners therein had been working against substantive vacancies and were never treated as ad hoc appointees. It also held that the mere fact that their services were not regularised, would not deny those petitioners the benefit of their continuity in service from the date of their initial appointment, and a subsequent regularisation would not take away their right to seniority from the date of their initial appointment. It is on the basis of these findings that the High Court directed to fix the seniority of the temporary doctors from the date of their initial appointment in the PMS cadre, giving them all the service benefits which were due to them after fixing their seniority. It was this judgment when brought before this Court, a 3-Judge Bench upheld the same. It also noticed the fact that the Regularisation Rules did not give them that benefit. Still this Court held that those doctors were entitled to count their service from the date of initial appointment for the purpose of counting their seniority. We have already noticed that this judgement has been successively followed in the subsequent cases, one of which at least came before this Court and the said view of this Court was affirmed.

In the subsequent judgments of this Court, as noticed by us earlier the 2-Judge Bench has held that ad hoc appointments made de hors the rules did not confer any right to permanency or seniority and that they acquire the right only from the date of their regular appointment according to the Rules. It had further held that while those temporary doctors who had approached the High Court and obtained directions from the Court can count their seniority from the date of their initial appointment, others, meaning thereby those temporary doctors who have not approached the court but were similarly appointed, could be given the seniority only from the date of their regularisation under the Rules. It is, thus, clear from the above referred observations in the judgment of the 2-Judge Bench that while the 3-Judge Bench upheld the right of temporary doctors (similarly situated as Dr. Mathur) as a class to be entitled to count seniority from the date of their initial appointment, by the subsequent judgment the 2-Judge Bench has taken a different view by holding that temporary appointees cannot claim seniority from the date of their initial appointment but can count the same only from the date of their regularisation under Rule 7 of the Regularisation Rules. This being the core issue involved in the dispute between the temporary doctors and selectee doctors, in our opinion, the 2-Judge Bench has taken a directly conflicting view from that taken by the 3-Judge Bench.

The question, therefore, for our consideration is: how far this is permissible?

The principles of the doctrine of binding precedent are no more in doubt. This is reflected in a large number of cases decided by this Court. For the purpose of deciding the issue before us, we intend referring to the following two judgments of this Court.

In the case of Union of India v. Raghubir Singh (supra), a 5-Judge Bench of this Court speaking through Pathak, CJ., held that pronouncement of a law by a Division Bench of this Court is binding on another. Division Bench of the same or smaller number of Judges. The judgment further states that in order that such decision be binding, it is not necessary that it should be a decision rendered by the Full Court or a Constitution Bench of the Court. To avoid a repetition of the discussion on this subject, we think it appropriate to reproduce the following paragraph of that judgment which reads as follows:

"What then should be the position in regard to the effect of the law pronounced by a Division Bench in relation to a case realising the same point subsequently before a Division Bench of a smaller number of Judges? There is no constitutional or statutory prescription in the matter, and the

point is governed entirely by the practice in India of the courts sanctified by repeated affirmation over a century of time. It cannot be doubted that in order to promote consistency and certainty in the law laid down by a superior Court, the ideal condition would be that the entire Court should sit in all cases to decide questions of law, and for that reason the Supreme Court of the United States does so. But having regard to the volume of work demanding the attention of the Court, it has been found necessary in India as a general rule of practice and convenience that the Court should sit in Divisions, each Division being constituted of Judges whose number may be determined by the exigencies of judicial need, by the nature of the case including any statutory mandate relative thereto, and by such other consideration which the Chief Justice, in whom such authority devolves by convention, may find most appropriate. It is in order to guard against the possibility of inconsistent decisions on points of law by different Division Benches that the rule has been evolved, in order to promote consistency and certainty in the development of the law and its contemporary status, that the statement of the law by a Division Bench is considered binding on a Division Bench of the same or lesser number of Judges. This principle has been followed in India by several generations of Judges. We may refer to a few of the recent cases on the point. In John Martin v. State of West Bengal, [1975] 3 SCC 836, a Division Bench of three Judges found it right to follow the law declared in Haradhan Shah v. Stare of West Bengal, [1975] 3 SCC 198, decided by a Division Bench of five Judges, in preference to Bhut Nath Mate v. State of West Bengal, [1974] 1 SCC 645 decided by a Division Bench of two Judges. Again in Indira Nehru Gandhi v. Raj Narain, [1975] Supp. SCC 1, Beg J held that the Constitution Bench of five Judges was bound by the Constitution Bench of thirteen Judges in Kesavananda Bharati v. State of Kerala, [1973] 4 SCC 225]. In Ganpati Sitaram Balvalkar v. Woman Shripad Mage, [1981] 4 SCC 143, this Court expressly stated that the view taken on a point of law by a Division Bench of four Judges of this Court was binding on a Division Bench of three Judges of the Court. And in Mattulal v. Radhe Lal, [1974] 2 SCC 365, this Court specifically observed that where the view expressed by two different Division Benches of this Court could not be reconciled, the pronouncement of a Division Bench of a larger number of Judges had to be preferred over the decision of a Division Bench of a smaller number of Judges. This Court also laid down in Acharya Maharajshri Narandraprasaiji Anandprasadji Maharaj v. State of Gujrat, [1975] 1 SCC 11 that even where the strength of two differing Division Benches consisted of the same number of Judges, it was not open to one Division Bench to decide the correctness or otherwise of the views of the other. The principle was reaffirmed in Union of India v. Godfrey Philips India Ltd., [1985] 4 SCC 369 which noted that a Division Bench of two Judges of this Court in Jit Ram Shiv Kumar v. State of Haryana, [1981] 1 SCC 11 had differed from the view taken by an earlier Division Bench of two Judges in Motilal Padampat Sugar Mills v. State of U.P., [1979] 2 SCC 409 on the point whether the doctrine of promissory estoppel could be defeated by invoking the defence of executive necessity, and holding that to do so was wholly unacceptable reference was made to the well accepted and desirable practice of the later bench referring the case to a larger Bench when the learned Judges found that the situation called for such reference." Almost similar is the view expressed by a recent judgment of 5-Judge Bench of this Court in Parija’s case (supra). In that case, a Bench of 2 learned Judges doubted the correctness of the decision of a Bench of 3 learned Judges, hence, directly referred the matter to a Bench of 5 learned Judges for reconsideration. In such a situation, the 5 Judge Bench held that judicial discipline and propriety demanded that a Bench of 2 learned Judges should follow the decision of a Bench of 3 learned Judges. On this basis, the 5-Judge Bench found fault with the reference made by the 2-Judge Bench based on the doctrine of binding precedent.

A careful perusal of the above judgments shows that this Court took note of the hierarchical character of the judicial system in India. It also held that it is of paramount importance that the law declared by this Court should be certain, clear and consistent. As stated in the above judgments,

it is of common knowledge that most of the decisions of this Court are of significance not merely because they constitute an adjudication on the rights of the parties and resolve the disputes between them but also because in doing so they embody a declaration of law operating as a binding principle in future cases. The doctrine of binding precedent is of utmost importance in the administration of our judicial system. It promotes certainty and consistency in judicial decisions. Judicial consistency promotes confidence in the system, therefore, there is this need for consistency in the enunciation of legal principles in the decisions of this Court. It is in the above context, this Court in the case of Raghubir Singh held that a pronouncement of law by a Division Bench of this Court is binding on a Division Bench of the same or similar number of Judges. It is in furtherance of this enunciation of law, this Court in the latter judgment of Parija (supra) held that-

"But if a Bench of two learned Judges concludes that an earlier judgment of three learned Judges is so very incorrect that in no circumstances can it be followed, the proper course for it to adopt is to refer the matter before it to a Bench of three learned Judges setting out the reasons why it could not agree with the earlier judgment. If, then, the Bench of three learned Judges also comes to the conclusion that the earlier judgment of a Bench of three learned Judges is incorrect, reference to a Bench of five learned Judges is justified."
(emphasis supplied)

We are in respectful agreement with the enunciation of law made by this Court in the above noted judgments in Raghubir Singh and Parija (supra). Applying the principles laid down in the abovesaid cases, we hold that the judgment of the 2-Judge Bench of this Court dated 23.3.1995 as modified by the subsequent order dated 26.7.1996 by the same Bench does not lay down the correct law, being in conflict with the larger Bench judgment. If that be so, the above writ petitions, from which this reference has arisen, will have to be decided de hors the law laid down by those two judgments of the Bench of two learned Judges. Therefore, having decided the issue that has arisen for our consideration, we think it just that these writ petitions should now be placed before a Bench of three learned Judges for final disposal.

At this stage, it is necessary to record the argument advanced on behalf of the respondents that the writ petitioners before us are not similarly placed as Dr. Mathur, hence, the benefit of the judgment of three Judge Bench in Dr. Mathur’s case is not applicable to the writ petitioners. They also contend that the Judgment in Dr. Mathur’s case runs counter to an earlier judgment of three Judge bench of this Court in the case of State of U.P. and Anr. v. Dr. M.J. Siddique and Ors., [1980] 3 SCC 174, therefore, it is contended that the claim of the writ petitioners herein should be considered independent of the judgment of 3-Judge Bench in Dr. Mathur’s case. At this stage, it is sufficient for us to say that we are not deciding the inter se rights of the petitioners and other respondents in these writ petitions or the correctness of the judgment of the 3-Judge Bench in Dr. Mathur’s case. If any such argument is raised, it will be considered in accordance with law by the Bench which will be hearing these petitions. Therefore, we do not express any opinion on these questions. We also make it clear that we are not passing any orders on the impleadment/ intervention applications pending in these petitions and those will be decided by the Bench hearing these writ petitions on their merits.

For the reasons stated above, we hold that the judgments of this Court dated 23.3.1995 and 26.7.1996 delivered by 2-Judge Bench in C.A. Nos. 4438-42/95 do not reflect the correct declaration of law, being in conflict with the Judgment of the 3-Judge Bench dated 24.11.1992 in SLP No. 13840 of 1992, we, further, direct that these petitions shall now be listed for disposal before a Bench of three learned Judges. Ordered accordingly.

N.J.

Petitions answered.