

Before Sanjay Kumar, J.

SURINDER SINGH AND OTHERS—*Petitioners*

versus

STATE OF PUNJAB AND OTHERS—*Respondents*

CWP No. 26634 of 2015

September 22, 2020

Constitution of India, 1950—Art. 226—Punjab State Electricity Board Technical Services Class-III Regulations, 1996, Regulation 9—Retrospective seniority in PSPCL—Petitioners started working as Junior Engineers-II (Electrical) in year 2011, unofficial respondents along with all other who preceded petitioners were already there in cadre—Thus, petitioners cannot seek seniority over such persons even notionally—In absence of rota-quota rule to determine inter se seniority of Junior Engineers recruited from different sources, they necessarily have to count their seniority from dates of their actual appointment to posts—Therefore, petitioners not entitled for retrospective seniority.

Held, that the inescapable fact remains that long before the petitioners started working as Junior Engineers-II (Electrical) in the year 2011, the unofficial respondents herein along with all the others who preceded the petitioners were already there in the cadre. The petitioners therefore cannot seek to assert seniority over such persons even notionally. In the absence of a rota-quota rule to determine *inter se* seniority of Junior Engineers recruited from different sources, they necessarily have to count their seniority from the dates of their actual appointment to the posts.

(Para 52)

Sanjay Kaushal, Senior Advocate, with Pankaj Sharma, Advocate, *for the petitioners* in both cases.

Navdeep Chhabra, Deputy Advocate General, Punjab.

Vinod S. Bhardwaj, Advocate, and Naveen Bhardwaj, Advocate, *for the PSPCL*.

Ritesh Aggarwal, Advocate, *for respondent No.268 in CWP-26634-2015*.

Karan Bhardwaj, Advocate, *for respondent No.87 and 354 in*

CWP-26634-2015.

D.S. Patwalia, Senior Advocate, with A.S. Chadha, Advocate, for respondents No. 369 - 372 in CWP-26634-2015.

SANJAY KUMAR, J.

(1) The issue raised in these writ petitions is as to the fixation of seniority of the petitioners in the cadre of Junior Engineer-II (Electrical) in the service of the Punjab State Power Corporation Limited (PSPCL).

(2) Copious exchange of affidavits and documents over the years by and between the parties yield the following facts: The Punjab State Electricity Board (PSEB), the predecessor-in-interest of the PSPCL, was governed by the Punjab State Electricity Board Technical Services Class-III Regulations, 1996 (for short, 'the Regulations'). The Regulations originally provided two modes of recruitment to the post of Junior Engineer-II (Electrical). Regulation 9, at Serial No.7, enabled direct recruitment to be made to the extent of 60% of the posts and promotions, on the strength of seniority-cum-merit, to the remaining 40%. Regulation 9 was amended, *vide* Office Order No.125 dated 24.11.2000, whereby direct recruitment was restricted to 30% of the posts and the remaining 30%, earlier earmarked for direct recruitment, was carved out for promotion of in-service technical employees having a diploma and 3 years experience or ITI with 10 years experience. This out-of-turn promotion avenue was based on a written test. The balance 40% of the posts remained reserved for regular promotion on seniority-cum-merit basis, as earlier. By Office Order No.55 dated 08.05.2001, the required minimum experience for ITI holders was reduced to 8 years.

(3) In this scenario, the PSEB issued Central Recruitment Advertisement (CRA) No.230 of 2002 dated 27.05.2002, notifying 130 posts of Junior Engineer-II (Electrical) for promotion of in-service candidates through a written test. However, after completion of the process, only 86 such posts were filled up. At that stage, some of the unsuccessful in-service candidates filed CWP-15347-2002, titled ***Bhupinder Singh Bedi and others versus Punjab State Electricity Board and others***, before this Court challenging the validity of the Regulations on the ground that they were not published in the Official Gazette as per due procedure. This writ petition was admitted on 23.01.2003.

(4) During the pendency of the above writ petition, the PSEB issued CRA No.109 of 2003 dated 22.12.2003 notifying 172 more posts for promotion of in-service candidates through a written test. 80% of the notified posts, aggregating to 137, fell in the general category while 20%, equivalent to 35 posts, were reserved for Scheduled Castes and Scheduled Tribes. The last date for submission of applications by eligible in-service candidates was initially fixed as 28.01.2004 but was thereafter extended to 31.03.2004. The written test was ultimately held on 10.10.2004 and 2382 out of 2624 candidates appeared for the test. In the interregnum, 144 vacancies had arisen in the 30% in-service quota during the year 2004 but no advertisement was issued in relation thereto. In effect, 316 posts were available for being filled up by the time the written test was held on 10.10.2004, though only 172 posts had been advertised. The result of the test was declared on 11.10.2004. The qualifying mark for the written test was finally set at 40% for general category candidates and 30% for reservation category candidates. As per these cut-off marks, 516 candidates of general category and 150 candidates of the reservation categories qualified.

(5) While matters stood thus, on 18.10.2004, the PSEB decided at the discussions held in the chamber of the Director (Personnel) that all the candidates who qualified in the written test should be called for documents/testimonials verification for preparing the panel of qualified candidates, instead of limiting it to the advertised 172 posts. It was further decided to keep the total panel of 666 candidates valid for a period of one year so that subsequent vacancies caused by promotions/retirements/ deaths could be filled up by taking recourse to this approved panel. This decision was taken to save the PSEB from repeating the cumbersome process of holding the written test and to enable it to fill up the vacant posts immediately, in the overall interest of work and efficiency. These aspects are borne out by the PSEB's Noting Sheets, obtained by the petitioners under the Right to Information Act, 2005.

(6) Pursuant to this decision, verification of the documents of 362 candidates out of the total 666 qualified candidates was completed by the PSEB. Candidates from the general category, from merit positions 1 to 291 (securing a minimum of 94 marks), and candidates from the reservation categories, from merit positions 1 to 71 (securing a minimum of 80 marks), were subjected to verification of their documents/testimonials. The 1st petitioner in CWP-26634-2015, belonging to SC category, secured 81 marks out of 200 in the written

test while the other petitioners, belonging to general category, secured more than or equivalent to 97 marks. The four petitioners in CWP-10886-2017 secured 84, 102, 95 and 97 marks respectively and the first of them belonged to a reservation category. The verification of documents/testimonials was undertaken by the PSEB on 16th, 17th and 18th December, 2004, and again, on 18th and 19th January, 2005. The petitioners in both these cases were called for verification of their documents/testimonials in January, 2005.

(7) It appears that the PSEB took the decision to appoint 204 Junior Engineers against the 172 advertised posts of the year 2003 and 188 Junior Engineers against the unadvertised 144 vacancies of 2004.

(8) At that stage, the petitioners in CWP-15347-2002 secured interim order dated 08.04.2005 therein that the PSEB should not fill up more than the advertised posts. Thereupon, the advertised 172 posts were filled up from out of the top 174 candidates, 2 candidates having opted not to accept the appointment, leaving behind 188 empanelled candidates in the waiting list. The PSEB decided that this panel of 188 candidates was to be kept alive till 31.12.2005. However, by order dated 16.12.2005 passed in CWP-15347-2002, this Court allowed the validity of the said waiting list to continue till the disposal of the writ petition.

(9) CWP-16597-2003, CWP-1029-2004 and CWP-14896-2004 were also filed before this Court in relation to CRA No.109 of 2003. These writ petitions were directed to be clubbed with CWP-15347-2002.

(10) With passage of time and intervening developments, the petitioners in CWP-15347-2002 informed this Court in November, 2010, that they did not wish to pursue the writ petition. At that stage, the learned senior counsel appearing for the added respondents in the said writ petition, being in-service candidates whose names figured in the waiting list, pointed out that by virtue of the order dated 16.12.2005, the waiting list had been kept alive and that it should not be permitted to become infructuous with the withdrawal of the writ petition. Thereupon, a Division Bench of this Court passed an order on 17.11.2010 dismissing the writ petition as withdrawn but directing that the select/wait list, which was otherwise valid up to 31.12.2005, should continue to be valid for another four months. The Bench also left it open to the Board, if so advised, to pass final orders within the period for which the select/wait list had been ordered to be kept alive. If no

decision was taken within the period of 4 months, liberty was granted to the added respondents to file an appropriate application. In view of this final order, the connected writ petitions were also disposed of on the same day.

(11) It may be noted that the learned counsel appearing for the PSEB brought it to the notice of the Bench that on 13.04.2010, during the pendency of the writ petition, the PSEB had been bifurcated into two – the PSPCL and the Punjab State Transmission Corporation Limited.

(12) Thereafter, 12 of the 13 petitioners in CWP-26634-2015 and 2 of the 4 petitioners in CWP-10886-2017, along with some others, filed CWP-15315-2010, titled *Surinder Singh and others versus State of Punjab and others*, before this Court assailing the PSPCL's Circular of 2010 notifying 167 posts under the 30% in-service quota and seeking appointment as Junior Engineers. This writ petition was disposed of as infructuous on 17.03.2011, as all the petitioners therein had already been promoted by that date. Some of the other wait-listed candidates separately filed CWP-3110-2011, titled *Racchpal Singh and others versus Punjab State Power Corporation Ltd. and another*, before this Court seeking appointment as Junior Engineers on the basis of the order dated 17.11.2010 passed in CWP-15347-2002. The said writ petition was disposed of on 21.02.2011, observing that it was within the discretion of the Board as to whether or not it should provide appointment to those in the waiting list and directing it to pass appropriate orders on the representation of the petitioners therein, within a time frame.

(13) While so, pursuant to the liberty granted, the PSPCL took a decision on 07.01.2011 to promote/appoint the 188 candidates who figured in the waiting list. Appointment orders were accordingly issued to these 188 candidates on 23.02.2011. However, only 124 out of the 188 candidates joined service as Junior Engineers-II (Electrical) as the others had either retired, been already promoted or had expired in the meanwhile. Out of these 124 Junior Engineers, 13 are the petitioners in CWP-26634- 2015 while 4 figure as the petitioners in CWP-10886-2017.

(14) As per the PSPCL, during the years 2005 to 2010, the PSEB had promoted in the regular course as many as 1233 Linemen to the posts of Junior Engineer-II (Electrical) on the basis of seniority-cum-merit, under the 40% regular promotion quota. According to it, no person junior to the petitioners had been granted promotion during that

period.

(15) That apart, as per the PSPCL, the PSEB undertook direct recruitment in May, 2010, pursuant to CRA No.264 of 2008, and 253 Junior Engineers were appointed directly to the service. Be it noted that four of the Junior Engineers who were directly appointed got impleaded as respondents No. 369 to 372 in CWP-26634-2015.

(16) The 30% quota meant for promotion of in-service candidates through a written test translated to 140 posts in 2005; 325 posts in 2006; 389 posts in 2007; and 268 posts in 2008, but the PSEB did not initiate the process of recruitment to these posts at all. It was only in the year 2010 that CRA 109 of 2010 was issued, proposing to fill up some of these posts by holding a written test for in-service candidates. The PSPCL stated that 184 out of the wait-listed panel of 188 candidates were shown in the select list pursuant to CRA No.109 of 2010. However, all of them, including the petitioners herein, joined service as Junior Engineers in February, 2011, as per the decision taken by the PSPCL on 07.01.2011. The other in-service candidates who were selected pursuant to CRA No.109 of 2010 were appointed as Junior Engineers only in March, 2011.

(17) In effect, none of the juniors of the petitioners in the cadre of Lineman were promoted as Junior Engineers by the time they were appointed as such in February, 2011. However, regular promotees (1233) and directly appointed Junior Engineers (253) entered the said service before them.

(18) The combined seniority list of Junior Engineers (Electrical) and Junior Engineers (Sub-Station) was prepared by the PSPCL on 15.05.2015 for the period 01.01.2003 to 31.12.2007. The 172 in-service candidates who were initially appointed in 2005 pursuant to CRA No.109 of 2003 stood between Serial Nos.8430 to 9213 in this seniority list along with respondents No.4 to 368 in CWP-26634-2015, who were at Serial Nos.8849 to 9213 therein. Thereafter, the PSPCL issued seniority list dated 02.05.2017 covering the period 01.01.2008 to 30.04.2010 indicating the seniority from Serial Nos.9214 to 9697. Again, on 13.03.2020, the PSPCL issued the seniority list covering the period 01.05.2010 to 31.12.2012 of the Junior Engineers standing at Serial Nos.9698 to 10507. The petitioners were allotted seniority between Serial Nos.9941 to 10069 while the direct recruits under CRA No.264 of 2008, who were appointed in May, 2010, including respondents No.369 to 372, figured at Serial Nos.9698 to 9940.

(19) The petitioners' claim is that they ought to have been given seniority in the cadre of Junior Engineer-II (Electrical) by placing them immediately after the 172 candidates who were appointed in 2005. They seem to have submitted objections/representations raising this issue and thereafter, two of the petitioners in CWP-26634-2015 approached this Court by filing CWP-24294-2014. The said writ petition was disposed of on 28.11.2014, directing the PSPCL to consider the claim put forth in the representations/objections within a time frame.

(20) In consequence, the PSPCL issued Office Order No.3 dated 27.01.2015 rejecting the said representations/objections. Therein, the PSPCL noted that the order dated 17.11.2010 passed in CWP-15347-2002 did not direct that the 188 candidates in the waiting list should be awarded seniority on par with the 172 candidates who were appointed earlier. Reference was then made to the decision of the whole-time Directors of the PSPCL, *vide* Memorandum No.4 dated 05.09.2011, to the effect that seniority should be assigned on the basis of the length of service and assignment of seniority to promotees should be from the date of issuance of the promotion orders. It was stated that the revised joint seniority list of Junior Engineers (Electrical) and Junior Engineers (Sub-Station) from 01.01.1979 to 31.12.2002 was issued and thereafter, for the period 01.01.2003 to 31.12.2007. It was observed that seniority had to be awarded to the 188 in-service candidates w.e.f. 07.01.2011, being the date of their panel, and they could not be given seniority on par with the 172 in-service candidates appointed earlier.

(21) It is this order that is subjected to challenge in both these cases. Consequential relief is sought, in terms of granting seniority to the petitioners by placing them immediately after the 172 candidates selected and appointed pursuant to CRA No.109 of 2003 in the year 2005.

(22) It may be noted that no interim orders were granted by this Court in CWP-26634-2015 in the first instance. No interim orders were passed in the second writ petition either. While so, the petitioners in the first case filed CM-7417-2019 on 08.05.2019, stating that the PSPCL was undertaking promotions of Junior Engineers-II as Junior Engineers-I/ Additional Assistant Engineers and seeking to restrain the PSPCL from doing so, on the ground that their juniors, the unofficial respondents, would be promoted. By order dated 23.05.2019 passed on this application, this Court directed the PSPCL to maintain *status quo* with regard to the contemplated promotions of the private respondents to the posts of Junior Engineer-I/Additional Assistant Engineer.

Respondents No.268 and 354 filed applications to vacate the aforesaid order dated 23.05.2019 and the matters were thereupon listed before this Court for hearing.

(23) Comprehensive arguments were advanced by the learned counsel appearing for the contesting parties, covering the entire gamut of the controversy that requires resolution. The writ petitions are therefore amenable to final disposal at this stage.

(24) Pertinent to note, Regulation 13 of the Regulations deals with seniority. This Regulation, to the extent relevant, reads thus:

'The mutual seniority in service of the member under service will be fixed on some special grade/category post from the date of his regular appointment on said grade

However, there will be condition that in case the member under service is appointed by way of direct recruitment, the eligibility list prepared at the time of selection for the appointment on post of said category, so far as seniority list of any specific category post by way of direct enrolment is concerned, will not be disturbed and the persons, who will appointed as a result of any prior selection, will be senior to those employees, who may have been appointed as a result of selection made on later stage. But the member in service, appointed by way of direct enrolment, whose probation period is extended, will have no right of seniority at the time of selection on the basis of position in merit list and his/her seniority will be fixed as per following note on the basis of his deemed date.

.....'

(25) Mr. Sanjay Kaushal, learned senior counsel for the petitioners, would contend that in terms of the exception to the general rule that seniority would be fixed from the date of regular appointment, a member appointed to the service by direct recruitment would be entitled to seniority on the basis of the merit list prepared at the time of selection. He would point out that the rule also stipulates that persons who were appointed as a result of a prior selection would be senior to those who were appointed as a result of a selection made at a later stage. He would assert that as all the petitioners were selected pursuant to CRA No. 109 of 2003 and were empanelled pursuant thereto, their selection must be deemed to precede the selection of the

unofficial respondents much later and they would be entitled, as of right, to be placed above them in the seniority list. He would contend that once the PSEB took a conscious decision to prepare a waiting list and the petitioners' names were included therein, they were deemed to have been selected for the post and only their appointments were delayed as an order was passed on 08.04.2005 in CWP-15347-2002, interdicting the PSEB from doing so. Learned senior counsel would argue that as the delay in their actual appointment was not through any fault of theirs, it would be adding insult to injury to deny the petitioners their rightful seniority owing to a stay that ultimately came to naught, as the case was dismissed as withdrawn.

(26) *Per contra*, Mr. D.S. Patwalia, learned senior counsel appearing for the impleaded respondents No.369 to 372 in CWP-26634-2015, would argue that the petitioners cannot claim seniority in the cadre of Junior Engineer-II (Electrical) prior to their birth in that service. As they were appointed to this cadre only in February, 2011, he would contend that the question of their claiming seniority from 2005 did not arise and all the more so, as they were only wait-listed candidates and had not even been selected. He would argue that the exception to Regulation 13 would not come to their rescue, as they were not even selected, and urge that, in any event, mere selection did not confer any right to be appointed. He would also point out that by the order dated 17.11.2010 passed in CWP-15347-2002, this Court had not granted any relief to the added respondents therein and it was only left to the discretion of the Board to pass final orders within the period for which the select/wait list had been kept alive. He would point out that the appointment letters issued to the petitioners in February, 2011, specifically stated that the appointees thereunder would not be entitled to seniority over any candidate whose seniority was yet to be fixed on account of having joined before him/her. He would further point out that the Regulations did not support preparation/maintenance of a waiting list to fill up posts beyond the advertised posts and, therefore, the relief conferred upon the petitioners, by virtue of the discretion granted under the order dated 17.11.2010, could not be stretched to the extent of giving them retrospective seniority from a date before they even entered that service. He would also point out that, in the letters issued to the petitioners in January, 2005, it was clearly stated that they should not assume that, by receiving the said letters, they had been selected as Junior Engineers.

(27) Mr. Karan Bhardwaj, learned counsel for respondents No.

87 and 354, and Mr. Ritesh Aggarwal, learned counsel for respondent No. 268, broadly adopted the aforesaid arguments. In addition thereto, Mr. Karan Bhardwaj, learned counsel, pointed out that his clients were not even served notice in the writ petition but their further promotion was stalled due to the *status quo* order. Mr. Ritesh Aggarwal, learned counsel, would point out that the waiting list was originally intended to be operative only for a year and the fact that it was kept alive merely extended the discretion of the authorities to act upon it, if they so chose. He would rely upon the observation to that effect made in the final order passed in CWP-3110-2011 on 21.02.2011. He would also rely upon the letters issued to the petitioners calling them for documents verification and assert that the same put it beyond the pale of doubt that they had not been selected and in consequence, they could not seek retrospective seniority under Regulation 13 of the Regulations.

(28) Mr. Vinod S. Bhardwaj, learned counsel for the PSPCL, would state that it was only pursuant to the order dated 17.11.2010 passed in CWP-15347-2002, that a decision was taken on 07.01.2011 to appoint the 188 candidates in the panel which was kept in abeyance during the pendency of the said writ petition. He would concede that the Regulations did not permit the PSEB to maintain a waiting list for filling up future vacancies, but a decision was taken in all sincerity to do so in order to protect the interest of the PSEB by obviating the cumbersome process of recruitment, time and again. He would assert that this decision could not be given effect to owing to the stay order passed in CWP-15347-2002 but, by clearing the written test, the said wait-listed candidates could not assume themselves to be selected candidates. He would point out that this aspect was made clear in the letters addressed to them while calling them for documents/testimonials verification. He would also point out that as several regular promotions and direct recruitments came to be made in the interregnum, those persons had a vested right to claim seniority from the date they entered service as Junior Engineers and the petitioners could not be permitted to steal a march over them by assuming that they had been selected earlier. He would point out that 727 candidates who were shown as senior to the petitioners, at Serial Nos. 9214 to 9940 of the seniority list, were not impleaded as party respondents and only the 364 Junior Engineers who stood at Serial Nos. 8849 to 9213 were arrayed as the respondents in CWP-26634-2015, apart from the four self-impleaded directly appointed Junior Engineers. He would therefore contend that the writ petitions were filed without arraying all the affected parties,

warranting dismissal of the cases for non-joinder of necessary parties. In summation, he would justify the allotted placement of the petitioners in the combined seniority lists and pray for dismissal of the writ petitions.

(29) It would be apposite to now refer to an affidavit and a written statement filed by the PSEB/PSPCL during the course of earlier litigation. The petitioners place strong reliance upon these documents.

(30) Krishan Kumar Gupta, Deputy Secretary, Recruitment, PSEB, Patiala, filed an affidavit in CWP-15347-2002 on 30.09.2009. To the extent relevant, he stated thus therein: After order dated 08.04.2005 was passed by this Court in CWP-15347-2002 directing the PSEB not to fill up any post beyond the posts already advertised, the in-service candidates who were selected in the written test got themselves impleaded and moved an application to vacate the order dated 08.04.2005. On 27.10.2005, the learned counsel appearing for the PSEB informed the Court that the PSEB had prepared a panel of candidates in a waiting list which was valid up to 31.12.2005 and that the PSEB was interested in filling up the posts from the waiting/panel list subject to permission being granted by the Court. The case was adjourned to 17.11.2005 but could not be taken up on that day. When it was taken up on 16.12.2005, this Court passed an order extending the validity of the waiting list till the disposal of the writ petition. Thereafter, the in-service candidates who got themselves impleaded moved another application seeking modification of the order dated 08.04.2005 to allow the PSEB to fill up the posts after reserving requisite number of posts for the petitioners in that writ petition. However, no order was passed on this application and the main case was itself directed to be listed for final hearing on 17.10.2007. It could not be heard thereafter for one reason or the other. He further stated that no departmental written test was held thereafter and none of the posts under the 30% quota could be filled up with in-service candidates through a written test after passing of the order dated 08.04.2005. 359 posts of Junior Engineer (Electrical) under this quota were stated to be lying vacant as on the date of the affidavit. The PSEB was stated to be suffering due to the non-filling of the posts. He also pointed out that promotions/ direct recruitment in the other quotas for the post of Junior Engineer (Electrical) were being made, subject to the outcome of the writ petition. The affidavit concluded with the statement that if the writ petition was not decided at the earliest, it would create further litigation regarding seniority/promotion of employees who were already

promoted/directly appointed as Junior Engineers under the other quotas, during this period. He sought hearing of the writ petition at the earliest or vacating or modification of the order dated 08.04.2005.

(31) The second document relied upon by the petitioners is the written statement filed in CWP-313-2011 by the PSPCL through its Deputy Secretary, Recruitment, Patiala, on 04.07.2011. This writ petition was filed by one Sarup Singh challenging the preparation of a panel of 188 candidates by the PSEB in January, 2005. To the extent relevant and leaving out the facts already noted *supra*, this written statement stated to the following effect: In terms of the order dated 17.11.2010 passed in CWP-15347-2002, the PSPCL decided on 07.01.2011 to provide promotion/appointment to the 188 candidates in the panel. As such, orders were issued to the said candidates and they joined service as Junior Engineers-II (Electrical). He stated that 666 candidates had qualified in the written test held on 10.10.2004 and the erstwhile PSEB had decided to check their testimonials in order to prepare a panel beyond 172 posts. A panel of 188 candidates was prepared after checking the testimonials and the said panel was valid till 31.12.2005. It was decided to fill up vacant posts during the said period but 188 posts could not be filled up because of the order dated 08.04.2005 passed in CWP-15347-2002. He admitted that CRA No.109 of 2003 was issued only for 172 posts of Junior Engineer-II (Electrical) but stated that, even if there was no provision for increase or decrease of the number of posts, the PSEB could take a decision in that regard and the decision taken to fill up the posts and prepare a panel beyond the 172 advertised posts was right. He pointed out that it was not a case of filling up posts from the open market but from amongst in-service candidates who had cleared the written test and therefore, the PSEB was well within its right in extending benefit to such employees. A conscious decision was stated to have been taken by the erstwhile PSEB to fill up the posts that fell vacant from the waiting list of 188 candidates, who had cleared the test. Due to the stay order dated 08.04.2005, the posts under the 30% quota for in-service candidates through a written test could not be advertised and the vacancies increased to 355 posts. The PSPCL decided to fill up 167 (355 – 188) posts through a fresh advertisement and CRA No.109 of 2010 was issued. As against these 167 notified posts, only 117 candidates cleared the test held on 09.01.2011. The 188 posts were kept vacant pending decision of the case. After the disposal of the writ petition, the PSEB decided to fill up these 188 posts from the waiting list which was kept alive and extended by another 4 months, *vide* the order dated

17.11.2010 passed in CWP-15347- 2002. He pointed out that even in CWP-15347-2002, the PSEB had informed the Court on 27.05.2005 that the panel had been prepared and that the PSEB was interested in filling up the vacant posts from the waiting list, subject to the permission of the Court, but this Court did not finally decide the issue. He reiterated that it was not direct recruitment but promotion/recruitment through clearing a written test and the competition was limited to the eligible in-service employees. He stated that 225 posts of Junior Engineer-II (Electrical) were advertised, *vide* CRA No.264 of 2008, but only 222 posts were filled up and 3 posts reserved for physically handicapped candidates remained vacant due to non-availability of such candidates. These posts were stated to relate to the direct recruitment quota and not to the quota meant to be filled up from in-service candidates through a written test. He further stated that as the number of candidates who cleared the test were far more than the advertised posts, it was rightly decided to keep the panel alive for one year, i.e., up to 31.12.2005, so that the vacancies arising during the said period could be filled up immediately and the efficiency of the PSEB would not be decreased. The matter was discussed by the PSEB on 18.10.2004 and it was decided that all candidates who qualified in the written test should be called for checking of documents/testimonials for preparing the panel of qualified candidates. He accordingly prayed for dismissal of the writ petition. As a matter of fact, the said writ petition was dismissed as withdrawn on 30.10.2012.

(32) At this stage, certain factual inconsistencies may be noted. Firstly, there is no clarity as to how many Junior Engineers were directly appointed in the year 2010 pursuant to CRA No. 264 of 2008. Presently, the PSPCL claims that 253 direct appointments were made but in the written statement filed in CWP-313-2011, the PSPCL had stated that only 222 out of the notified 225 posts were filled up. The second aspect is with regard to CRA No.109 of 2010, issued in relation to the 30% in-service quota. The PSPCL now claims that 184 of the 188 wait-listed candidates made it to the select list pursuant to this CRA, but they were appointed in February, 2011, on the basis of the decision taken on 07.01.2011. However, in the written statement filed in CWP-313-2011, the PSPCL had stated that only 167 posts were notified, *vide* CRA No.109 of 2010, by deducting the 188 posts earmarked for the wait-listed candidates from the total 355 vacancies available at that point of time. It was further stated that only 117 candidates cleared the test, which is contradictory to the present stand that 184 of the wait-

listed 188 candidates made it to the said select list. However, these factual inconsistencies are of no real relevance or significance to the present *lis* or the adjudication thereof.

(33) It would be appropriate at this stage to consider the settled legal position on *inter se* seniority issues and case law relevant thereto. Ordinarily, seniority can be claimed only from the date of actual entry into that particular service or post. Reference in this regard may be made to ***Ram Janam Singh versus State of U.P. and another***¹, wherein the Supreme Court affirmed that the date of entry in a particular service is the safest rule to follow while determining *inter se* seniority between one officer and another or between one group of officers and others, recruited from different sources. Reliance was placed upon the Constitution Bench judgment in ***Direct Recruit Class II Engineering Officers' Association versus State of Maharashtra and others***² and ***State of W.B. and others versus Aghore Nath Dey and others***³, which also held to this effect. The Supreme Court observed that it is now well settled that seniority of an officer in service should be determined with reference to the date of his entry in the service and that this would be consistent with the requirements of Articles 14 and 16 of the Constitution.

(34) Again, in ***Pawan Pratap Singh and others versus Reevan Singh and others***⁴, the Supreme Court observed that the date of entry in a particular service or the date of substantive appointment would be the safest criterion for fixing seniority and any departure therefrom in the statutory rules or executive instructions must be consistent with the requirements of Articles 14 and 16 of the Constitution. It was further observed that seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so provided by the service rules expressly, and this is so because seniority cannot be given on retrospective basis when an employee was not even born in the cadre and doing so may adversely affect employees who were validly appointed in the meantime.

(35) In ***State of Uttar Pradesh and others versus Ashok Kumar Srivastava and others***⁵, the Supreme Court held that unless

¹ (1994) 2 SCC 622

² (1990) 2 SCC 715

³ (1993) 3 SCC 371

⁴ (2011) 3 SCC 267

⁵ (2014) 14 SCC 720

otherwise stipulated in the letter of appointment, seniority would have to be computed from the date of appointment to the post. Reliance was placed on the earlier decision in **Union of India versus S.S. Uppal and another**⁶, wherein it was observed that weightage in seniority cannot be given with retrospective effect unless it was specifically provided in the rule itself.

(36) In *State of Karnataka and others versus C. Lalitha*⁷, the Supreme Court observed that it is well settled that seniority should be governed by rules and a person should not be allowed to derive undue advantage over other employees as the concept of justice demanded that one should get what is due to him or her as per law.

(37) In *State of Uttaranchal and another versus Dinesh Kumar Sharma*⁸, the Supreme Court held that no retrospective promotion or seniority can be granted from a date when an employee was not even born in the cadre.

(38) In *Nirmal Chandra Sinha versus Union of India and others*⁹, the Supreme Court held that a promotion would take effect only from the date it is granted and not from the date of occurrence of the vacancy or creation of the post. It was also held that the date of occurrence of the vacancy is irrelevant for determination of seniority.

(39) More recently, in *K. Meghachandra Singh and others versus Ningam Siro and others*¹⁰, the Supreme Court observed that law is fairly well settled that a person is not entitled to claim seniority from a date when he was not even borne in the service. Dealing with the earlier decision in *Union of India and others versus N.R. Parmar*¹¹, the Supreme Court noted that the observation made therein, that a selected candidate could not be blamed for the administrative delay and the gap between initiation of the process and his appointment, was fallacious as none can be identified as being a selected candidate on the date the process of recruitment commences. *Per* the Supreme Court, only on completion of the process, an applicant morphs into a selected candidate and therefore, an unnecessary observation had been made in *N.R. Parmar* (*supra*) to the effect that a selected candidate cannot be

⁶ (1996) 2 SCC 168

⁷ (2006) 2 SCC 747

⁸ (2007) 1 SCC 683

⁹ (2008) 14 SCC 29

¹⁰ 2019 SCC On Line SC 1494 = 2019 (17) SCALE 494

¹¹ (2012) 13 SCC 340

blamed for administrative delay and loss of seniority. Reference was made to *Shankarsan Dash versus Union of India*¹², wherein it was held that even upon empanelment, a candidate does not acquire any right. The decision in *N.R. Parmar (supra)* was accordingly overruled.

(40) The petitioners' claim for retrospective seniority would have to be tested in the backdrop of the aforesaid legal principles. Before embarking upon that quest, certain crucial and telling aspects may be noted: It is the admitted position that the Regulations did not authorize a waiting list being maintained by the PSEB for filling up future vacancies and that CRA No.109 of 2003 was issued by the PSEB on 22.12.2003, notifying only 172 posts under the 30% in-service quota. In its wisdom, the PSEB decided to come up with a waiting list, which was to be kept alive for a period of one year, so as to enable it to fill up future vacancies without going through the recruitment process time and again. The validity of this decision and exercise was sought to be raised before this Court by way of a miscellaneous application filed in CWP-15347-2002. The same resulted in the interim order dated 08.04.2005, restraining the PSEB from filling up more than the advertised posts. However, no final decision materialised on this issue as the writ petition was ultimately dismissed as withdrawn on 17.11.2010. The other writ petitions filed against this advertisement were also disposed of on the same day without this issue being dealt with on merits.

(41) Thus, the validity of this decision and exercise of the PSEB was never tested. At the same time, it could not be acted upon as intended by the PSEB, due to the stay order that remained operative from April, 2005 till November, 2010. It was only by virtue of the extension granted by this Court, while dismissing CWP-15347-2002 on 17.11.2010, that the waiting list, which was otherwise valid only up to 31.12.2005 but had been kept alive during the pendency of the writ petition, remained valid for a further period of 4 months. This extension was to enable the Board, if so advised, to pass final orders in the context of the said waiting list.

(42) In effect, it was only because of the 'cloak of validity' afforded to this waiting list by the four-month extension granted by this Court, *vide* the order dated 17.11.2010 in CWP-15347-2002, that it remained alive and the PSPCL thereupon took a decision on 07.01.2011

¹² (1991) 3 SCC 47

to act on it. Be it noted that even as per the order dated 17.11.2010, this Court merely left it open to the Board, if so advised, to pass final orders in the context of the waiting list. This 'discretionary aspect' was again brought into focus in the order dated 21.02.2011 passed by this Court in CWP-3110-2011. Therein, it was observed that it was within the discretion of the Board as to whether or not it should provide appointment to those in the waiting list. Therefore, there was no positive direction by this Court at any time that those in the waiting list should be appointed or that their appointment, if any, should be from a particular date.

(43) Admittedly, the petitioners were issued appointment orders in February, 2011. Therein, there was no indication that their appointments would date back to the year 2005 on par with the 172 candidates who were appointed at that point of time. Notwithstanding the same, the petitioners chose to remain mute and silently accepted the appointments offered to them. Significantly, most of the petitioners herein had jointly filed CWP-15315-2010 before this Court seeking appointment as Junior Engineers-II (Electrical) but even therein, they did not pray for retrospective appointment on par with the 172 candidates appointed earlier. To compound matters further, they allowed CWP-15315-2010 to be disposed of as infructuous on 17.03.2011, though they were well aware by that date that their appointment orders of February, 2011, did not treat them on par with the 172 candidates appointed in the year 2005.

(44) Reliance was placed by the petitioners upon Office Order No.95/BEG dated 06.06.2014, passed by the PSPCL in relation to certain Assistant Engineers (Electrical). However, it does not further their case. Perusal of the said Office Order reflects that CRA No.268 of 2006 had been floated by the PSEB for filling up the posts of Assistant Engineer (Electrical) and three persons belonging to Scheduled Caste reservation category were not selected. They filed CWP-17723-2011 and CWP-2690- 2012 before this Court contending that meritorious reservation category candidates, who ought to have been included in the open category, had been shown against their respective reservation categories, thereby resulting in depriving them of their lawful right to be considered for selection and appointment against such reserved posts. These writ petitions were allowed with costs on 24.07.2013 directing the PSPCL to give them employment w.e.f. the date when the right accrued to them. Pursuant thereto, the three petitioners therein were given appointment with retrospective effect by way of this Office

Order. The factual position obtaining in the cases on hand being entirely different, this Office Order does not benefit the petitioners.

(45) Further, the reliance placed upon Regulation 13, pertaining to seniority, is also of no avail to the petitioners. This Regulation makes it clear that, ordinarily, the seniority in a particular service would be fixed on the basis of the date of regular appointment. The exception carved out is that in case of direct recruitment to a service, the merit list prepared at the time of selection would be a decisive factor for determining seniority amongst such direct recruits. The exception further provides that persons who were appointed as a result of a prior selection would be senior to those who were appointed as the result of a later selection. The clear language of the regulation makes it apparent that these exceptions apply only to direct recruitment. However, it is an admitted fact that the petitioners were not directly recruited as Junior Engineers (Electrical) but were promoted as such, based on a written test, under the 30% in-service quota. The amendments made to Regulation 9 speak of this 30% in-service quota as a promotional avenue and not as an avenue of direct recruitment. The mere fact that this out-of-turn promotion quota was created by carving out 30% from the 60% earmarked for direct recruitment earlier would not have the effect of bringing such promotees under the category of direct recruits. Further, even if such out-of-turn promotions were based on a written test, it would not have the effect of equating such promotions with direct recruitment.

(46) That being the factual position, even if the argument of the petitioners that the exception to the general rule in Regulation 13 would have application to them is to be considered, without being conceded, they still fail to fulfil the prescribed conditions. As already pointed out, the exception speaks of an earlier selection prevailing over a later selection, insofar as seniority of such selected candidates is concerned. When the PSEB issued CRA No.109 of 2003 notifying only 172 posts, it cannot be presumed that its later action in preparing a waiting list for far more than the notified posts would entitle all those empanelled therein to aspire to the status of 'selected candidates'.

(47) It is no doubt true that the PSEB intended to fill up future vacancies by taking recourse to this waiting list and it was stated to that effect by the PSEB/PSPCL, by way of the affidavit/written statement referred to *supra*. However, when the very status of this waiting list remained obscure and in the realm of uncertainty owing to the stay order dated 08.04.2005 passed in CWP-15347-2002, the question of

treating the petitioners and all such wait-listed candidates as 'selected candidates' at this late point of time does not arise. Notably, this waiting list pertained to the 30% in-service quota and could therefore be applied only to future vacancies arising in that quota. In the meanwhile, vacancies arising under the other two quotas, viz., direct recruitment and regular promotions, would have been filled up in the usual course. Hypothetically speaking, if the argument of the petitioners is accepted, it would mean that those in the subject waiting list pertaining to the 30% in-service quota could claim to be senior to those appointed before them under the other two quotas, as their 'selection' was earlier in point of time! Such an anomaly was not envisaged by the regulation. It arose only because of the unauthorized decision of the PSEB to maintain a waiting list over an extended period of time. A decision that now stands protected, to the good fortune of the petitioners, owing to the four-month extension granted by this Court.

(48) Ordinarily, a selection list would be limited to the number of posts notified or would be marginally more than such notified posts, in terms of the relevant rules. As already noted, there was no such rule in the present case and the waiting list originated out of the decision taken by the PSEB. Be it noted that the decision of the PSEB, at that point of time, was to accommodate all 666 candidates who had qualified and if the argument of the petitioners is to be accepted, all of them would be entitled to claim the status of 'selected candidates'. However, it was not the understanding of even the PSEB that all such qualified candidates should be treated as 'selected candidates'. This aspect is demonstrated by the letters issued by the PSEB to the petitioners in January, 2005, calling them for verification of their documents/testimonials. Therein, the PSEB categorically stated that the mere issuance of the said letters should not be taken to mean that such candidates had been selected as Junior Engineers. As the PSEB itself made it known to the wait-listed candidates that they had not been 'selected' merely because they were called for documents' verification, it is too late in the day for them to raise this issue or protest about the same. Had they any grievance with this stand of the PSEB in January, 2005, they ought to have sought redressal thereof at that time. Having failed to do so and having accepted the appointments offered to them in February, 2011, without demur or protest, the petitioners cannot now contend that they stood 'selected' in the year 2005 itself and that their appointments in 2011 should relate back. Further, the failure to raise this issue in their earlier writ petition, CWP-15315-2010, also weighs against all but three of the petitioners herein and is fatal to their cause.

(49) The petitioners' further contention is that, as they were also 'selected' pursuant to CRA No.109 of 2003 along with the 172 candidates who were appointed at that point of time, there cannot be two separate classes of appointments under the very same advertisement. This argument is palpably specious and does not merit acceptance. Had the PSEB been allowed to proceed on its planned path of action, it would have filled up future vacancies arising in this quota by taking recourse to the waiting list. In consequence, the petitioners and the other wait-listed candidates would have been appointed in the year 2005 or shortly thereafter. Acting upon this waiting list over a period of time would have given rise to complications, as already pointed out hereinabove, insofar as the other two quotas were concerned. However, such an event did not come to pass owing to the interim order dated 08.04.2005 passed in CWP-15347-2002. The waiting list remained in suspended animation during the pendency of the said writ petition and was revived only for a period of 4 months after the dismissal of the writ petition, *vide* order dated 17.11.2010. It is owing to this intervening circumstance that this peculiar situation has arisen, leading to appointments being made under the same advertisement at two different and divided points of time.

(50) In the interregnum, it is an admitted fact that the PSPCL made appointments to the posts of Junior Engineer-II (Electrical) by taking recourse to the other two modes of recruitment, viz., by direct recruitment in the year 2010, pursuant to CRA No.264 of 2008, and by regular promotions under the 40% promotion quota from the feeder category of Lineman. Not only the impleaded private respondents in CWP-26634-2015 but also several others figure in these two categories of recruitment and stand above the petitioners in the seniority lists.

(51) In this regard, it has been contended by the learned counsel for the PSPCL that the writ petitions deserve dismissal on technical grounds as all the affected parties are not impleaded. The claim of the petitioners in CWP-26634-2015 is that they are justified in impleading only some of these seniors as they figured in the 1st seniority list pertaining to the period 01.01.2003 to 31.12.2007. This contention does not hold good as the petitioners want to be placed immediately below the 172 candidates appointed in 2005 and doing so would invariably have an adverse impact on all those presently standing above the petitioners in the seniority lists. Further, it may be noted that CWP-10886-2017 was filed without impleading even one affected Junior Engineer. Therefore, both the writ petitions are also bad for non-

joinder of necessary parties.

(52) The inescapable fact remains that long before the petitioners started working as Junior Engineers-II (Electrical) in the year 2011, the unofficial respondents herein along with all the others who preceded the petitioners were already there in the cadre. The petitioners therefore cannot seek to assert seniority over such persons even notionally. In the absence of a rota-quota rule to determine *inter se* seniority of Junior Engineers recruited from different sources, they necessarily have to count their seniority from the dates of their actual appointment to the posts.

(53) All being said and done, it was only by virtue of the liberty given to the PSPCL, *vide* the order dated 17.11.2010 in CWP-15347-2002, that the petitioners secured appointment as Junior Engineers. In their present endeavour to claim retrospective seniority, they completely failed to establish their legal entitlement to seek such relief.

(54) On the above analysis, this Court finds no error having been committed by the PSPCL in allotting seniority to the petitioners on the strength of their actual appointments in 2011. The impugned order dated 27.01.2015 holding to that effect warrants no interference. The writ petitions are devoid of merit and are accordingly dismissed. Interim order dated 23.05.2019 shall stand vacated. Pending interlocutory applications in both the writ petitions shall also stand dismissed.

(55) No order as to costs.

Ritambra Rishi