

Before G.S. Sandhawalia, J.

MANJIT PAL SINGH AND OTHERS—Petitioners

versus

THE STATE OF PUNJAB AND OTHERS—Respondents

CWP No. 5809 of 1997

January 11, 2013

Constitution of India 1950 - Art 226/227 - Punjab Municipal Corporations Act 1976 - S. 71 - Punjab Municipal Corporation Services (Recruitment and condition of Service) Rules 1978 - S.10 & 11 - Seniority list - Name of temporary work charge were entered into the seniority list - Many tentative seniority lists were issued before the final list - Contended that appointment of the private respondents was done by incompetent authority - The petition was suffering from laches and delay - Held, seniority list which remains in existence for 3-4 years unchallenged, should not be disturbed - Length of continuous appointment is the criteria for seniority - Judgments referred by the petitioners cannot be accepted in the absence of any rule granting the benefit of prior service - Writ petition dismissed on merits and ground of delay and laches.

Held, that a perusal of the sub Section (6) of the Section 71 of the Corporation Act goes on to show that the persons serving before the issue of notification under sub Section (1) of Section 71 of the Corporation Act serving in a city on a post in relation to which a corporation service was constituted would become members of the corresponding corporation service from the date of issuance of said notification if found fit. As noticed above, the order had been passed in the case of private respondents on 25.11.1983 and 9.1.1984. The petitioner in Civil Writ Petition No. 14763 of 1997 has not been placed any such order in his own cases as to when he was absorbed and made member of service and from which date. The claim of the petitioner that he had been appointed on regular basis on 29.9.1977, therefore, he was entitled to be declared senior over and above the private respondents cannot be accepted in the absence of any rule which would grant the petitioner benefit of prior service.

(Para 22)

Further held, that in the present case, counsel for the petitioners has failed to show that the petitioner was entitled for some additional benefits on account of regular service from 29/30.9.1977 once the corporation service under Section 2(m) of the 1978 Rules was itself regularised for other employees from 8.8.1978, therefore the petitioner cannot claim any additional benefit or claim seniority over and above the private respondents for the period prior to 8.8.1978.

(Para 23)

Further held, that the petitioners in Civil Writ Petition No.5809 of 1997 admittedly joined in December, 1978 and May/June, 1979 whereas private respondents joined in August and September, 1977 prior to them and were regularised with effect from 8.8.1978 which was prior in time to the appointments of the petitioners and, therefore, the petitioners in the said writ petition cannot have grouse that they have been shown junior to the private respondents.

(Para 24)

S.D.Sharma, Senior Advocate with Bindu Goel, Advocate, *for the petitioner* (in CWP No.14763 of 1997)

None for the petitioners in CWP No.5809 of 1997

Anu Pal, Assistant Advocate General, Punjab for respondents No.1 and 2.

Rajiv Atma Ram, Sr. Advocate with Arjun Partap Ram, Advocate for respondents No.3 to 7.

Manoj Kumar, Advocate for respondent no.8.

G.S. SANDHAWALIA, J.

(1) This order shall dispose of Civil Writ Petitions No.5809 and 14763 of 1997.

(2) The dispute in both the petitions is common to the extent that the seniority list dated 7.3.1996 of Sectional Officers is under challenge and the order dated 25.11.1983 whereby respondents no.3 to 5, namely, Harinder Singh, Arun Kumar and Surinder Mahendru were made members of the service of the Corporation with effect from 8.8.1978. Further prayer

has been made for directing respondents no.1 and 2 to declare the petitioners senior to the private respondents and also for issuance of a writ in the nature of certiorari quashing the orders dated 10.4.1995, 28.9.1995 and 18.3.1996 whereby the said private respondents have been promoted as Assistant Corporation Engineers and to consider the case of the petitioner to the post of Assistant Corporation Engineer with effect from the date the persons junior to him had been promoted.

FACTS OF CIVIL WRIT PETITION NO.5809 OF 1997:-

(3) The pleaded case of the petitioners in this case, is that they had been made juniors to the private respondents by counting their work charge service. The petitioners No.1 and 2 were appointed vide appointment letter dated 6.12.1978 and petitioners no.3 and 4 were appointed vide appointment letter dated 23.5.1979 on the basis of the merit list prepared by the Selection Committee and they joined on 21.12.1978, 18.12.1978, 3.6.1979 and 1.6.1979 respectively. Reference was made to the dates of joining of private respondents no.3 to 7 between 16.8.1977 to 26.9.1977 to plead that they were appointed on work charge basis and their appointments were made by the Commissioner, Municipal Corporation, Amritsar. It was pleaded that the said appointments were made by the incompetent authority and the official respondent No.2 had at that time also selected 33 candidates who had applied for the post of Sectional Officer vide letter dated 5.11.1976. The Commissioner, Municipal Corporation, Amritsar also recommended to respondent no.1 vide letter dated 27.7.1979 for regularisation of the private respondents who were regularised vide order dated 13.8.1979 (Annexure P-4). The tentative seniority list of Sectional Officer had been circulated in the year 1979 vide letter dated 16.10.1979. The names of the petitioners No. 2 to 4 were mentioned at Sr. Nos. 43,46 and 50 respectively whereas that of private respondents were mentioned at Sr. Nos.26,27,31,33 and 34 respectively. The name of petitioner no.1 was not included in the said seniority list. Petitioner No.2 had filed objections on 19.10.1979 in pursuance of the tentative seniority list and other persons had also filed objections. Vide order dated 20.1.1983 and 25.11.1983 respondents no.3 to 7 had been deemed to have become members of the respondent Corporation with effect from 8.8.1978 on which date the notification constituting the Corporation service was issued under sub Section (1) of Section 71 of the Punjab Municipal Corporations Act, 1976 (hereinafter referred to "the Corporation

Act"). Since the seniority list was not finalised, the petitioners again made representation on 10.1.1986 and respondent no.2 vide memo dated 28.5.1987 circulated the final seniority list of Sectional officers of the Municipal corporation wherein private respondents were shown senior to the petitioners. The name of the petitioner no.1 did not figure in the seniority list and he had filed representation on 21.2.1991. In the year, 1994 another tentative seniority list was circulated vide letter dated 4.10.1994 in which names of petitioners no.2 to 4 were mentioned at Sr. Nos.26 to 28 respectively and that of private respondents at Sr. Nos.12,13,17,18 and 19 respectively. Since the seniority list was totally wrong, the petitioners filed their objection and petitioner no.1 vide letter dated 28.10.1994 requested that his name be included in the seniority list. Similarly, petitioner no.3 filed objections on 28.10.1994 and also requested that he should be assigned seniority over and above the private respondents. Petitioner no.4 also filed objections on 31.10.1994. No action was taken on the said objections and petitioners again sent reminders on 6.4.1995, 17.4.1995, 4.8.1995 and 16.2.1996. The official respondent promoted Harinder Singh as Assistant Corporation Engineer on 10.4.1995. The petitioners filed Civil Writ Petition No.12413 of 1995 challenging the promotion of respondent no.3 and the seniority list. During the pendency of the writ petition, respondents no.4 and 5 were also promoted on 25.9.1995 and 18.3.1996 as Assistant Corporation Engineers. Another Civil Writ Petition No.16255 of 1994 was filed by Harbhajan Singh and direction was also sought to finalise the seniority list and eventually the Sectional officers were called for personal hearing and seniority list was finalised on 7.3.1996. The seniority list shows that name of the petitioners figure at Sr. Nos.25,27,28 and 29 respectively and that of private respondents at Sr. Nos.12,13,17,18 and 19 respectively. In Civil Writ Petition No.12413 of 1995 order dated 19.11.1996 was passed whereby the petition was dismissed as withdrawn with liberty to the petitioners to challenge the order dated 20.1.1983 and 25.11.1983 whereby the private respondents were made members of the service with effect from 8.8.1978. Thus, the present writ petition has been filed on the ground that as per provisions of the Punjab Municipal Service (Recruitment and Conditions of Service) Rules, 1975 (hereinafter referred to as "the 1975 Rules"), the Sectional officers were to be appointed by the Director, Local Government, Punjab and appointments of the private respondents were made by the incompetent authority. As per Rule 11 of 1975 Rules seniority

was to be determined from the date of continuous appointment and the private respondents at the most could be assigned seniority with effect from 13.8.1979 when they were allowed to continue in service. As per instructions dated 29.3.1957 the private respondents could not be declared senior to the petitioners since they have been appointed on temporary basis without the recommendation of the Service Selection Board.

(4) In the written statement filed on behalf of respondents no.1 and 2, it has been pleaded that the petitioners failed to avail the alternative remedy of filing an appeal against the finalisation of the seniority by respondent no.2 under Section 11(3), Appendix-D of the Punjab Municipal Corporation Services (Recruitment and Conditions of Service) Rules, 1978 (hereinafter referred to as "the 1978 Rules") before the competent authority. The tentative seniority list had been finalised in view of the direction of this Hon'ble Court in Civil Writ Petition No.16255 of 1994 filed by Harbhajan Singh after following proper procedure and affording opportunity of hearing to all the concerned persons including the petitioner on 16.2.1996. The final seniority list was brought to the notice of the High Court and the writ petition was dismissed. The primary challenge to the appointments of respondents no.3 to 7 after a period of more than 20 years was highly belated. The petitioner wrongly quoted the rule of seniority and the rule governing the seniority is Rule 10 of the 1978 Rules and not Rule 11 of the 1975 Rules as reproduced in the petition and the length of service was to be taken into consideration. The 1978 Rules came into force with effect from 8.8.1978 and prior to that the Commissioner, Municipal Corporation, Amritsar under Section 71 of the 1976 Act was competent to appoint a person and the petition being highly belated could not be allowed at this stage and the issue was stale.

(5) On merits, it was pleaded that the petitioners were shown as juniors than the private respondents in the final seniority list which stood finalised under the orders of this Court. The Commissioner was fully empowered to appoint the private respondents in the year 1977 as Junior Engineers. The Corporation had not been impleaded as party. Prior to the upgradation of the Municipal Committee, Amritsar into Municipal Corporation, Amritsar on 30.3.1977, the Municipal Committee, Amritsar was governed under the Punjab Municipal Rules, 1975 and the appointing authority to the post of Sectional Officer (Junior Engineer) was Director, Local Government,

Punjab but with effect from 30.3.1977, the day on which Municipal Committee was converted into Municipal Corporation, Amritsar, the appointing authority of the Junior Engineers became the Commissioner of the Corporation. The Rules had been made applicable with effect from 8.8.1978 and during the intervening period i.e. from 30.3.1977 to 8.8.1978 the appointing authority of the Junior Engineers was the Commissioner of the Corporation. The petitioners were fully aware that the private respondents had already been appointed by the Corporation with effect from 8.8.1978 and it was incumbent upon the Commissioner to seek the approval of the competent authority for regularisation of the services of the private respondents. The competent authority i.e. Director, Local Government, Punjab in view of the provisions of Section 71 of the Corporation Act read with the 1978 Rules accorded approval to the regularisation of the service of private respondents from the date they were initially appointed by the Municipal Corporation, Amritsar. The appointments of private respondents were made by a competent authority and State Government had rightly regularised their services from the date of their initial appointment vide orders dated 9.1.1983 and 25.11.1983. The private respondents were declared fit for absorption in the provincialised cadre of Sectional Officers by the screening committee under Section 71(6) of the Corporation Act on the basis of their service record from 8.8.1978 on which date the notification constituting the Corporation service was issued. The petitioner wrongly quoted the rule of seniority and the rule governing the seniority is Rule 10 of the 1978 Rules and not Rule 11 of the 1975 Rules as reproduced in the writ petition. The 1978 Rules came into force on 8.8.1978 and prior to that the Commissioner, Municipal Corporation, Amritsar under Section 71 of the Corporation Act was competent to appoint a person. The Commissioner being the Principal Officer of the Municipal Corporation, it was within his competence to appoint any person as he was the sole judge to consider suitability and make appointment of the private respondents. The length of service was consideration for determining the seniority. The Municipal Corporation, Amritsar was impleaded as party respondent No.8 but no written statement had been filed on its behalf.

(6) In the written statement filed on behalf of respondents no. 3 to 7, it was pleaded that the answering respondents were working prior to the appointments of the petitioners in the Corporation and the petitioners

were aware of the appointments of answering respondents and the fact that the answering respondents were senior to them. The tentative seniority list had been circulated on 16.10.1979 and the final seniority list had been circulated on 24.5.1985. Final seniority list was again circulated on 28.5.1987 and the tentative seniority list was again circulated on 4.10.1994 and eventually the final seniority list was issued on 7.3.1996. The petitioners had filed objections against the tentative seniority list on 16.10.1979 claiming seniority over and above the answering respondents as stated by them in para 6 of the writ petition. The petition was suffering from the vice of delay and laches and no explanation was forthcoming. The final seniority had never been challenged and the current seniority list only reiterates the seniority position of the previous years and the two seniority lists of 1985 and 1987. The petitioners had concealed the said facts and thus, the petition was liable to be dismissed on this short ground. The rules relied upon by the petitioners were not applicable to the Corporations and were applicable to the Municipal Committees and the petitioners had tried to mislead this Court. Similarly situated persons, who had been made regular with effect from 8.8.1978 and appointed in the year 1983 had not been made party. The writ petition was barred by the principle of resjudicata as earlier Civil Writ petition No.12413 of 1995 had been dismissed as withdrawn. The petitioner no.1 filed representation in which he claimed a place below the answering respondents and, therefore, the writ petition was not maintainable.

(7) On merit, it was pleaded that even the petitioners were appointed without any advertisement and the appointments thereof were in complete violation of Section 71 of the Corporation Act and Rule 5 of the 1978 Rules. Thus, the appointment of the petitioners was dehors the rules and the Act and they could not claim seniority over and above the answering respondents. The regular posts in the Municipal Corporations were advertised and names were also summoned from the Employment Exchanges. They were appointed on adhoc/work charge basis by the Selection Committee by the Commissioner, who was the competent authority. The tentative seniority list had been circulated on 16.10.1979 in which the petitioners were shown junior to the answering respondents and the petitioners had deliberately concealed that this seniority list was finalized after considering all objections and final seniority list was circulated on 25.4.1985. On 28.5.1987 the final seniority list was prepared and circulated and the private respondents were

shown senior to the writ petitioners. Petitioner no. 1 did not claim seniority over the answering respondents and claimed seniority after Sr. No.41 below the answering respondent and above the writ petitioners. Promotions were made to the post of Assistant Corporation Engineers on the basis of the said seniority list and there was no challenge to the same and the final seniority list was issued on 7.3.1996 which reiterated the earlier position. As per operation of law, the answering respondents were deemed to have been appointed on 8.8.1978 and protected by the 1978 Rules. No adhoc service was sought to be counted for the purpose of seniority. The petitioners were challenging the work charged service which was not permissible.

FACTS OF CIVIL WRIT PETITION NO.14763 OF 1997:-

8. The pleaded case of the petitioner is that he was selected for the post of Sectional Officer against a permanent post and he was appointed on regular basis in the Municipal Corporation, Jalandhar vide appointment letter dated 29.9.1977 and joined his duties on 30.9.1977. Respondents No.3 to 7 were appointed on work charge basis in the year 1977 and respondents no.3 and 4 joined on 16.8.1977, respondent no.5 joined on 19.9.1977, respondent no.6 joined on 23.9.1977 whereas respondent no.7 joined on 26.9.1977. The private respondents were appointed on work charge basis by the Commissioner, Municipal Corporation, Amritsar. It has been pleaded that the said private respondents had been appointed on purely temporary basis by the Commissioner and the appointments which were made on regular basis by the Selection Committee after interviewing the candidates were by the Director, Local Government, Punjab and as many as 33 persons were appointed as Sectional Officers as per letter dated 5.11.1976. The petitioner had come to know that the Commissioner, Municipal Corporation, Amritsar had recommended to respondent no.1 that the private respondents be regularised in service as Sectional Officers. The tentative seniority list of Sectional Officers (Civil) of the Municipal Corporations was circulated in the year 1979 vide letter dated 16.10.1979 and another tentative seniority list of Sectional Officers was circulated in the year 1994 vide letter dated 4.10.1994 in which the name of the petitioner was mentioned at Sr. No.20 and those of private respondents at Sr. Nos.12,13,17,18 and 19 respectively. The petitioner had filed objections yet respondent no.3 was promoted as Assistant Corporation Engineer on 10.4.1995. Similarly respondents no.4 and 5 had been promoted

as Assistant Corporation Engineer on 25.9.1995 and 18.3.1996 respectively. Another Civil Writ Petition No.16255 of 1994 was filed by one Harbhajan Singh wherein direction had been sought to finalise the seniority list of Sectional Officers (Civil) of the Corporations which was allowed and the seniority list was finalised on 7.3.1996. The name of the petitioner was mentioned at Sr. No.20 whereas those of private respondents at Sr. Nos.12,13,17,18 and 19 respectively and thus the petitioner was aggrieved with the action of the official respondents in placing the private respondents as senior to the petitioner. The private respondents could not be granted seniority of the service rendered by them on work-charge basis and as such they could not be declared senior to the petitioner who was appointed by a competent authority on regular basis after following the laid down procedure. Reference was made to Rule 11 of the 1975 Rules to plead that the seniority would be determined from the date of appointment and the persons who had been appointed by incompetent authority just as make shift arrangement and had rendered service on temporary basis could not be made senior. It was further pleaded that as per order dated 25.11.1983, private respondents would be deemed to have become members of the respective Corporation's service with effect from 8.8.1978 and that as per Sub-Section (1) of Section 71 of the 1976 Act only those persons were ordered to have been made members of the corresponding services with effect from 8.8.1978 who were recruited on regular basis.

(9) In the written statement filed on behalf of respondents no.1 and 2, it has been pleaded that the petitioner failed to avail the alternative remedy of filing an appeal against the finalisation of the seniority by respondent no.2 under Section 11(3), Appendix-D of the 1978 Rules before the competent authority. The tentative seniority list had been finalised in view of the direction of this Hon'ble Court in Civil Writ Petition No.16255 of 1994 after following proper procedure and after affording opportunity of hearing to all the concerned persons including the petitioner on 16.2.1996. The final seniority list was brought to the notice of the High Court and the writ petition was dismissed. The views put forward by the petitioner at the time of hearing were duly considered by the competent authority while finalising the seniority list, therefore, the writ petition had become infructuous because the seniority list had since been finalised after giving opportunity of hearing to all the concerned persons including the petitioner. The writ petition was barred by

inordinate delay and laches and the final seniority list had been challenged after more than 1-1/2 years. The orders appointing respondents no.3 to 5 with effect from 8.8.1978 were challenged after 20 years and even the orders of promotion of private respondents was challenged after 1-1/2 years. The petitioner wrong quoted rule of seniority and the rule governing the seniority was Rule 10 of the 1978 Rules and not Rule 11 of the 1975 Rules as reproduced in the petition. The 1978 Rules came into force on 8.8.1978 and prior to that the Commissioner, Municipal Corporation, Amritsar under Section 71 of the Corporation Act was competent to appoint a person. The seniority list had been finalised after following proper procedure as per Government instructions and giving opportunity of hearing to all the concerned persons including the petitioner. The petitioner was junior to the private respondents in the final seniority list which stood finalised under the order of this Court dated 16.2.1996 passed in Civil Writ Petition No.16255 of 1994 titled Harbhajan Singh Vs. State of Punjab.

(10) The Corporation had not been impleaded as party in the petition and at the relevant time, the Commissioner, Municipal Corporation, Amritsar was competent to make such appointments. The Municipal Committee, Amritsar was converted into Municipal Corporation, Amritsar with effect from 30.3.1977 and the appointing authority of the Junior Engineers became the Commissioner of the Corporation. No service rules were framed for the employees of the Corporation and the 1978 Rules were made applicable on 8.8.1978 and as such during the intervening period i.e. from 30.3.1977 to 8.8.1978 the appointing authority of the Junior Engineers was the Commissioner. The competent authority i.e. Director, Local Government, Punjab in view of the provisions of Section 71 of the Corporation Act read with the 1978 Rules accorded approval to the regularisation of services of private respondents from the date they were initially appointed by the Municipal Corporation. The tentative seniority list was circulated amongst all the Junior Engineers of all the Municipal Corporations and even in this tentative seniority list respondents no.4 to 7 were shown senior to the petitioner. The 1978 Rules were enforced with effect from 8.8.1978 and under the said rules, the appointing authority of Sectional officer was Director, Local Government, Punjab and the private respondents were rightly regularised from the date of their initial appointment vide orders dated 9.1.1983 and 25.11.1983. They were declared fit for absorption in the

provincialised cadre of Section Officers by the screening committee under Section 71 (6) of the Corporation Act on the basis of their service record. As per Rule 10 of the 1978 Rules the seniority of the members of service inter-se would be determined by the length of their continuous appointment on a post in that service and the service rendered prior to 8.8.1978 was also to be considered as Corporation service and all the officials including the private respondents were entitled to the benefit of past service.

(11) Notice of motion was issued on 1.8.1997 and it was directed that promotions, if any, shall abide by the final decision of the writ petition. The Municipal Corporation, Amritsar was impleaded as respondent no.8 vide order dated 26.3.1999 in Civil Misc. No.9772 of 1998 but has not filed reply. The writ petition was admitted for hearing on 14.7.1999 and ordered to be heard with Civil Writ Petition No.5809 of 1997 as the seniority list dated 7.3.1996 was also challenged in that case.

ARGUMENTS:-

(12) Counsel for the petitioners submitted that under Section 71 (5) of the 1976 Act, the petitioner had been appointed after following the proper procedure and reference was made to the appointment letter dated 29.9.1977 in the case of Kuldip Raj Sharma in Civil Writ Petition No.14763 of 1997. The private respondents had become members of service from 8.8.1978 as per letter dated 25.11.1983 in view of the orders passed under Section 71(6) of the Corporation Act. Reference was made to Rule 2 (m) of the 1975 Rules and Rules 5, 10 and 11. In order to support the case of the petitioner, reference was also made to *Keshav Chandra Joshi and others* versus *Union of India and others* (1) *Kesar Chand* versus *State of Punjab through the Secretary, P.W.D. B & R, Chandigarh and others* (2) *State of West Bengal and others* versus *Aghore Nath Dey and others* (3) and *Secretary, State of Karnataka and others* versus *Umadevi and others* (4) to contend that adhoc period could not be counted for the purpose of seniority.

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- (1) AIR 1991 SC 284
 - (2) 1988 (2) PLR 223
 - (3) 1993 (2) SLR 528
 - (4) AIR 2006 SC 1806

(13) Counsel for private respondents, on the other hand, contended that the private respondents have been appointed by the competent authority which was the Commissioner, Municipal Corporation, Amritsar at that point of time under the provisions of Section 71 of the Corporation Act after following the proper procedure. Reliance has been placed upon *Direct Recruit Class II Engg. Officers' Association versus State of Maharashtra and others (5)* and *Agore Nath Dey's case (supra)* to contend that the appointments of the private respondents were valid after proper advertisement and interviews. It was further contended that the Corporation came into existence on 30.3.1977 and the 1978 Rules came into force on 8.8.1978 and there was no rules governing at the time of appointments of the parties, therefore, during the said period the appointments were made under the Corporation Act. Reliance was placed upon *Union of India and others versus Central Administrative Tribunal and others (6)* to contend that the work charge period would be counted towards the seniority. It was further submitted that the persons serving would become the members of service under Section 71(6) of the Corporation Act and as per Rule 5 of 1978 Rules, option was to be obtained from the person serving and as per Appendix A, the Sectional officers were mentioned at Sr. No.10. The service came into existence from 8.8.1978 and length of service was to be taken into consideration under Rule 10 of the 1978 Rules. The petition was delayed and liable to be dismissed on the ground of laches and concealment since the seniority list had been circulated on 24.5.1985 and 28.5.1987. The petitioners in Civil Writ Petition No.14763 of 1997 had omitted mentioning of seniority list of 1985 and 1987. Reference made to *State of M.P. versus Bhaial Bhai (7)* and *P.S.Sadasivaswamy versus State of Tamil Nadu (8)*. It was further submitted that challenge to the absorption made on 8.8.1978 at this stage was not possible.

FINDINGS

(14) The question which first arises for consideration is whether the challenge is patently time barred as submitted by the respondents since the

(5) AIR 1990 SC 1607

(6) 2009 (5) SLR 49

(7) AIR 1964 SC 1006

(8) 1976(1) SLR 53

plea taken is that the tentative seniority list was circulated on 16.10.1979 and the final seniority list had also been circulated on 24.5.1985. Another final seniority list was again circulated on 28.5.1987 and thereafter tentative seniority list was circulated on 4.10.1994 and eventually final seniority list was issued on 7.3.1996. The record shows that vide order dated 13.8.1979, the Government while dispensing with the services of one Rajesh Dev, Sectional Officer had granted approval for the continuation of service of the private respondents with effect from 8.8.1978. It was further mentioned that the services of the said five officers whose services have been approved action would be taken under Section 71(6) of the Corporation Act. Thereafter, on 25.11.1983 further order was passed whereby Harinder Singh, Arun Kumar and Surinder Mahendru were found fit for becoming members of corresponding corporation service. The said employees along with others were deemed to have become members of the respective corresponding corporation service with effect from 8.8.1978 on which date the notification constituting the corporation service was issued under sub Section (1) of Section 71 of the 1976 Act. The written statement of official respondents shows that on 9.1.1984 similar order was passed regarding the other two private respondents, namely, Gurbachan Singh and Major Singh and they were made members of the corresponding corporation service again with effect from 8.8.1978. Vide letter dated 25.4.1985, the tentative seniority list of the Sectional Officers (Civil) of the Corporation which had been circulated on 12.10.1979 was finalised. It is the case of the petitioners themselves that private respondents were shown at Sr. Nos. 26,27,31,33 and 34 respectively whereas petitioners no.2 to 4 were at Sr. Nos. 43,46 and 50 respectively, however, name of the petitioner no.1 did not figure in the said seniority list. Thus, the petitioners took no action on the finalisation of the said seniority list way back in 1985 and neither challenged the order dated 25.11.1983 and 9.1.1984 at that point of time whereby private respondents were made members of the corporation service with effect from 8.8.1978. The challenge now to the final seniority list dated 7.3.1996 on the ground that the Civil Writ Petition No.12413 of 1995 had been decided on 19.11.1996 and the Civil Writ Petition No.16255 of 1995 had been filed by Harbhajan Singh in which the seniority list was finalised would be of no avail. By filing the said writ petitions in 1995, cause of action which accrued to the petitioners to challenge the seniority list which was finalised on 25.4.1985 could not be revived at such a belated stage. It has been

time and again held that challenge to such seniority list should be made at the earliest and the earlier view was that it should be filed within a period of six months. Reference can safely be made to the judgment of the Apex Court in **P.S.Sadasivaswamy's** case (supra) in which it was held that the writ petition is to be filed within six months or at the most in a year for relief in service matter and stale claims cannot be entertained.

"2.Not only respondent 2 but also respondents 3 and 4 who were the appellant's juniors became Divisional Engineers in 1957 apparently on the ground that their merits deserved their promotion over the head of the appellant. He did not question it. Nor did he question the promotion of his juniors as Superintending Engineers over his head. He could have come to the Court on every one of these three occasions. A person aggrieved by an order of promoting a junior over his head should approach the Court at least within six months or at the most a year of such promotion. It is not that there is any period of limitation for the Courts to exercise their powers under Article 226 nor is it that there can never be a case where the Courts cannot interfere in a matter after the passage of a certain length of time. But it would be a sound and wise exercise of discretion for the Courts to refuse to exercise their extra-ordinary powers under Article 226 in the case of persons who do not approach it expeditiously for relief and who stand by and allow things to happen and then approach the Court to put for-ward stale claims and try to unsettle settled matters- The petitioner's petition should, therefore have been dismissed in limine. Entertaining such petitions is a waste of time of the court. It clogs the work of the Court and impedes the work of the court in considering legitimate grievances as also its normal work. We consider that the High court was right in dismissing the appellant's petition as well as the appeal.

3. This appeal is dismissed with costs."

(15) In **P. Chitharanja Menon & others** versus **A. Balakrishnan and others** (9), a three Judges Bench of the Hon'ble Apex Court held that once the legality of the promotion made in 1962 had not been challenged then the validity of the Government order in 1969 could not be challenged

by filing a writ petition in the year 1972. The present case is also somewhat similar. Recently, the Apex Court in *Shiba Shankar Mohapatra versus State of Orissa (10)*, has held that in seniority matters, delay should not be beyond a period of 3 years and the reasons for not approaching the Court should be explained. The relevant observation reads as under:

“29. Thus, in view of the above, the settled legal proposition that emerges is that once the seniority had been fixed and it remains in existence for a reasonable period, any challenge to the same should not be entertained. In K.R. Mudgal (supra), this Court has laid down, in crystal clear words that a seniority list which remains in existence for 3 to 4 years unchallenged, should not be disturbed. Thus, 3-4 years is a reasonable period for challenging the seniority and in case someone agitates the issue of seniority beyond this period, he has to explain the delay and laches in approaching the adjudicatory forum, by furnishing satisfactory explanation.”

(16) Thus, keeping in mind the above observations, there is substance in the submission of the counsel for the private respondents that the present writ petition has to be dismissed on the ground of laches and delay also as the petitioners had opted not to challenge the orders dated 25.11.1983 and 9.1.1984 in the earlier writ petition vide which private respondents were made members of the Corporation service. Even in the seniority list circulated in 1979, 1985 & 1987 they had been shown junior to the private respondents and no challenge had been raised till 1995.

(17) The second issue that arises for consideration on merits is as to whether the petitioners are entitled for claiming the relief of seniority. The dates of joining of the petitioners in Civil Writ Petition No.5809 of 1997 are 21.12.1978, 18.12.1978, 3.6.1979 and 1.6.1979 respectively whereas the date of joining of the petitioner in Civil Writ Petition No.14763 of 1997 is 30.9.1977, whereas private respondents had joined on 16.8.1977, 19.9.1977, 23.9.1977 and 26.9.1977 respectively admittedly prior to the writ petitioners in Civil Writ Petition No.5809 of 1997. Similarly the said private respondents also joined prior in time to the writ petitioner in Civil Writ Petition No.14763 of 1997, The issue, therefore, arises for consideration which the counsel for the petitioners submitted that the private respondents

had joined on work charge basis and, therefore, they were not entitled to count that period of work charge for the purpose of seniority, since the petitioner Kuldeep Raj Sharma in Civil Writ Petition No. 14763 of 1997 was appointed on 29.9.1977 by the Commissioner after following the proper procedure and after interview against the vacant post. It is, therefore, necessary to refer to the relevant rules which would govern the parties. Admittedly, Rule 10 of the 1978 Rules governs the seniority of the members of the service and the said Rule reads as under:-

“10. *Seniority of members of service*:- The seniority inter se of the members of a Service shall be determined by the length of their continuous appointment on a position in that service.

Provided that in the case of members appointed by direct recruitment their inter se seniority shall be in the order of merit in which they have been placed by the Selection Committee.

Provided further that in the case of two or more members appointed on the same date, a member appointed by direct recruitment shall be senior to a member appointed otherwise.

Provided further that in case of members recruited under sub-rule (1) rule 5 their inter se seniority shall be determined by the length of their service on a corresponding post in the service.”

(18) A perusal of the said Rule goes on to show that the length of continuous appointment is the criteria for seniority inter-se the members of service. The proviso further provides that the members recruited under sub rule (1) of Rule 5 their seniority would be determined by the length of their service on a corresponding post in the service.

(19) Rule 5 (1) of the 1978 Rules reads as under:-

“*Method of Recruitment (1)* :- Recruitment to the posts in a service at the time of its initial constitution shall be made by the appointing authority by absorption of persons already in the service of a Municipal Corporation in a corresponding post at the time of the constitution of service, provided they are found fit by an authority appointed by the Government in this behalf for becoming members of the service after taking into consideration their qualifications and service record.”

(20) A perusal of the said Rule would show that persons already in service of the Municipal Corporation had to be absorbed at the time of constitution of service after taking into consideration their qualifications and service record. The meaning of service has been defined in Rule 2(m) of the 1978 Rules which reads as under:-

“2. Definitions:- In these rules, unless the context otherwise requires:-

xx xx xx

(m) ‘Service’ means a Municipal Corporation Service constituted by Government under sub-section (1) of section 71 of the Act.”

(21) The said absorption under Section 71(6) of the 1976 Act took place on 25.11.1983 and 9.1.1984 with effect from 8.8.1978 in the case of the private respondents and order was passed under Section 71(6) of the Corporation Act which reads as under:-

“71. Posts in Corporation and appointments thereto. - (1) The Government may, by notification, constitute in the prescribed manner, all or any of the following Corporation Services, namely :

- (i) Punjab Service of Corporation Engineers and Sectional Officers;
- (ii) Punjab Service of Corporation Health Officers;
- (iii) Punjab Service of Corporation Secretaries;
- (iv) Punjab Service of Corporation Accounts Officers and Accountants; and
- (v) Such other Corporation Service as the Government may decide.

(2) The Government may make rules for regulating the recruitment and the conditions of service of members of the Corporation Services referred to in sub-section (1), and the classification of such services and for the duties and functions of the members of such services.

(3) The Government may transfer any member of a Corporation Service from a post in one Corporation to a post carrying the same scale of pay in another Corporation.

(4) The salary, allowances, gratuity, annuity, pension and other payments required to be made to the members of the Corporation Services in accordance with the conditions of their service shall be charged from the Corporation Fund in the prescribed manner.

(5) Creation of posts in a Corporation Service and appointment of members thereto shall be made by the Government or by an authority empowered by the Government in this behalf after taking into consideration the requirements of the Corporation and their financial capacity but no such member shall be deemed to have been appointed to any civil service or post under the State.

(6) Every person who, immediately before the issue of a notification under sub-section (1), is serving in a City on a post in relation to which a Corporation service is constituted shall on the issue of such notification become a member of the corresponding Corporation Service if he is found fit by an authority appointed by the Government in this behalf for becoming such a member on the basis of his qualifications and service record and if he is not found fit the post on which he is serving shall be deemed to have been abolished:

Provided that the condition regarding determination of fitness for becoming a member of a Corporation Service shall not apply to a person who was found to be fit for becoming a member of the corresponding Municipal Service constituted under section 38 of the Punjab Municipal Act, 1911, or was recruited thereto at any time thereafter:

Provided further that the terms and conditions of service of a person who becomes a member of a Corporation Service in the manner referred to above, in so far as they relate to remuneration, gratuity and provident fund shall not be varied to his disadvantage on his becoming a member of the Corporation Service.”

(22) A perusal of the sub Section (6) of the Section 71 of the Corporation Act goes on to show that the persons serving before the issue of notification under sub Section (1) of Section 71 of the Corporation Act serving in a city on a post in relation to which a corporation service was constituted would become members of the corresponding corporation service

from the date of issuance of said notification if found fit. As noticed above, the order had been passed in the case of private respondents on 25.11.1983 and 9.1.1984. The petitioner in Civil Writ Petition No.14763 of 1997 has not been placed any such order in his own cases as to when he was absorbed and made member of service and from which date. The claim of the petitioner that he had been appointed on regular basis on 29.9.1977, therefore, he was entitled to be declared senior over and above the private respondents cannot be accepted in the absence of any rule which would grant the petitioner benefit of prior service. The judgments referred by the petitioners cannot be taken into account without reference to the rules which would govern the parties. It is categorical case of the official respondents that the Corporation came into existence on 30.3.1977 and the Commissioner of the Municipal Corporation was a competent authority to appoint a person. The rules had come into force with effect from 8.8.1978 and, therefore, appointments of the private respondents were valid appointments under the Corporation Act. The petitioners have referred to Rule 11 of the 1975 Rules which admittedly pertains to the Punjab Municipal Services, therefore, they would not be applicable in case of the corporation service. The Hon'ble Apex Court recently in a judgment *State of Haryana and others versus Vijay Singh and others (11)*, after taking into consideration the judgment of the Hon'ble Apex Court in *Direct Recruit Class II Engg. Officers' Association's case (supra)* and *Agore Nath Dey's case (supra)* has held that just applying the judgments would be of no help and it is the Rules which are to be taken into consideration. The relevant paragraph of the judgment reads as under:-

“23. Before concluding, we consider it proper to notice the judgments on which reliance has been placed by learned counsel for the respondents. This consideration needs to be prefaced with an observation that the cases in which recruitment and conditions of service including seniority are regulated by the law enacted by Parliament or the State Legislature or the rules framed under Article 309 of the Constitution, the general proposition laid down in any judgment cannot be applied de hors the relevant statutory provisions and dispute relating to seniority has to be resolved keeping in view such provisions.”

(23) In the present case, counsel for the petitioners has failed to show that the petitioner was entitled for some additional benefits on account of regular service from 29/30.9.1977 once the corporation service under Section 2(m) of the 1978 Rules was itself regularised for other employees from 8.8.1978, therefore the petitioner cannot claim any additional benefit or claim seniority over and above the private respondents for the period prior to 8.8.1978.

(24) The petitioners in Civil Writ Petition No.5809 of 1997 admittedly joined in December, 1978 and May/June, 1979 whereas private respondents joined in August and September, 1977 prior to them and were regularised with effect from 8.8.1978 which was prior in time to the appointments of the petitioners and, therefore, the petitioners in the said writ petition cannot have grouse that they have been shown junior to the private respondents.

(25) Accordingly, for the reasons recorded above, both the writ petitions are dismissed on merits as well as on ground of delay and laches.
