

IN THE HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Original Side

Present:

The Hon'ble Justice Debangsu Basak

and

The Hon'ble Justice Md. Shabbar Rashidi

APOT No. 183 of 2024

Ashoke Kumar Roy & Others

Vs.

Prasenjit Roy & Others.

With

APOT No. 218 of 2024

Badal Roy & Another

Vs.

Prasenjit Roy & Others

with

APO No. 59 of 2024

Prasenjit Roy & Others

Vs.

Ashoke Kumar Roy & Others

For the appellant in APO 59
of 2024

: Mr. Ranajit Chatterjee, Adv.

For the respondent in APOT
183 of 2024

And

APOT 218 of 2024

: Mr. Arijit Dey, Adv.

For the appellant in APOT
183 of 2024

: Mr. Amal Kr. Ganguly, Adv.

: Mr. Bikash Ranjan Neogi, Adv.

: Ms. Ananya Neogi, Adv.

For the appellant in APOT
218 of 2024

: Mr. Raghunath Chakraborty, Adv.

: Ms. Amrita De, Adv.

For the KMC

: Mr. Alak Kr. Ghosh, Adv.

: Mr. Swapan Kr. Debnath, Adv.

Heard on

: January 14, 2025

Judgment on

: February 25, 2025

Md. Shabbar Rashidi, J.

- 1.** The three appeals are in assailment of an order dated March 12, 2024 passed in WPO No. 1248 of 2022.
- 2.** A.P.O. No. 59 of 2024 and A.P.O.T. No. 218 of 2024 are at the behest of respondents in Writ Petition who are said to have superseded the writ petitioners in the impugned final gradation list of Assistant Engineers (Civil) published on July 5, 2021.
- 3.** By the impugned order the learned Single Judge allowed the writ petition filed on behalf of the respondents by directing the respondent KMC to recall the resolution adopted by the Board of Administrators of KMC at its meeting dated June 29, 2021. The learned Single Judge also quashed the final gradation list of the AE(C) of KMC dated 5th July, 2021. The respondent KMC was further directed to create a fresh gradation list considering the supernumerary posts created in the year 2012.
- 4.** The appellants in A.P.O. No. 59 of 2024 submitted that the writ petitioners filed the writ petition challenging the finally published gradation list where they were placed juniors to the present

appellants except one. It was also contended that the appellants as well as the writ petitioners belonged to the cadre of Sub-Assistant Engineer (S.A.E) and in such cadre, the writ petitioners, were junior to the appellants in A. P. O. No. 59 of 2024 except one who was senior of some of the appellants, which was explicit from the gradation list published in the year 2015. The writ petitioners never challenged such gradation list at any point of time. The writ petitioners were placed at serial number 92, 100, 102 and 103 respectively in such gradation list of SAE prepared and published on July 5, 2021. The appellants, however, were placed between serial number 81 and 99 of such gradation list.

5. It was also contended on behalf of the appellants in A. P. O. No. 59 of 2024 that the writ petitioners, by filing W. P. O. No. 1248 of 2022 challenged the gradation list of Assistant Engineers (Civil) published in the year 2021 on the ground that the present appellants had acquired their graduation degree in 2010 – 2011 i.e. subsequent to the writ petitioners who had acquired degree in 1996, 1997, 2002 and 2005 respectively. It was the contention of the writ petitioners that since they had acquired

graduation degree prior to the present appellants, they were wrongly shown juniors to the appellants in the gradation list of 2021.

6. According to the appellants, the circular issued on July 3, 2012 creating supernumerary posts, clearly depicted that such posts were outside the cadre of AE (C). The supernumerary posts were supposed to disintegrate upon absorption of a person holding that particular post to the regular cadre of Assistant Engineer (Civil) in terms of the extant recruitment rules. The present appellants also submitted that creation of supernumerary posts was not to be construed as a regular promotion being not done in accordance with the recruitment rules.

7. The appellants in A. P. O. No. 59 of 2024 also submitted that the appellants and the writ petitioners were all working as Sub- Assistant Engineers and all the writ petitioners were juniors to the present appellants except Ataur Rahman who was senior to appellant Milan Kumar Sarkar and Atish Ranjan Manna. The appellants also acquired the requisite bachelor's degree in Engineering in 2010 and 2011 well before five years

prior to their promotion to the cadre of Assistant Engineer between 2018 - 2020. At that relevant point of time, when the appellants in A. P. O. No. 59 of 2024 were promoted to the post of AE (C), the writ petitioners were still working in the supernumerary posts appointed without following the 50 point roster. Acquisition of Bachelor Degree by the writ petitioners prior to that of the appellants in A. P. O. No. 59 of 2024 was of no consequence, in so far as the writ petitioners were inducted into service later than the appellants and were juniors to such appellants.

- 8.** Learned advocate for appellant in A. P. O. No. 59 of 2024 further submitted that the appellants were their juniors in the cadre of Sub-Assistant Engineer, even prior to their placement in the supernumerary post in the year 2012. In spite of them being in service for more than five years after acquisition of graduation degree in 2010-2011, they could not be promoted until 2015-16 due to unavailability of vacancies. They were regularly promoted in 2018-2019. In consideration of such stagnation, the appellants were favoured with notional fixation of their seniority with effect

from July 6, 2012. The writ petitioners were also shown juniors to the appellants in A. P. O. No. 59 of 2024 in the gradation list for SAEs published on September 23, 2015. Such gradation list was never challenged by anyone.

- 9.** According to the appellants in A. P. O. No. 59 of 2024, the promotion to the cadre of AE from the cadre of SAE was to be carried out in accordance with the recruitment rules on the basis of seniority. The said appellants were promoted in accordance with the recruitment rules. The writ petitioners were holding the supernumerary posts, which were outside the cadre strength and was personal to them, which was subject to adjustment on their absorption as AE in the cadre. The writ petitioners were absorbed in the cadre of AE in 2020 – 2021 against available permanent vacancies which was subsequent to the promotion of the appellants in A. P. O. No. 59 of 2024 in 2018 – 2019. Till then, the writ petitioners were holding the supernumerary posts on ad hoc and temporary basis. The appellants also submitted that for the aforesaid reasons, the

names of the writ petitioners were not included in the gradation list of AEs published on August 24, 2015

- 10.** The appellants in A. P. O. No. 59 of 2024 also submitted that the gradation list published on August 24, 2015 depicted the seniority position of the incumbents in the cadre of AE from the date of their promotion in the cadre. The writ petitioners who were holding supernumerary posts prior to their promotion to the cadre of AE in the year 2021 cannot challenge the said gradation list without challenging promotion process itself. Learned advocate also relied upon **(2010) 1 Supreme Court Cases 417 (Amarjeet Singh and Ors. V Devi Ratan and Ors)**, **(2020) 13 Supreme Court Cases 161 (Vinod Giri Goswami and Ors. V State of Uttarakhand and Ors)**, **(2021) 17 Supreme Court Cases 399 (Rashi Mani Mishra and Ors. V State of Uttar Pradesh and Ors.)**, **2023 S.C. Serv R 434 (Smt. Imlikokla and Ors. V State of Nagaland and Ors)**, **(2022) 3 Supreme Court Cases 197 (Shyam Sunder Oberoi and Ors. V District and Sessions Judge Tis Hazari Court, Delhi and Ors)** and **(1980) 3 Supreme Court Cases 245 (Katyani Dayal and Ors. V Union of India and Ors)**.

11. On a proposition that an employee holding a supernumerary post without following the Recruitment Rules, cannot be equated with regular promotees, the learned advocate for the appellants in A. P. O. No. 59 of 2024 relied upon **AIR 2021 SC 4611 (Chandan Banperjee v Krishna Prasad Ghosh)**.
12. A.P.O.T. No.183 of 2024 is at the behest of the writ petitioners. Although, the writ petition filed on their behalf was allowed by the impugned judgment and order but the writ petitioners have assailed the same mainly on the ground that the learned Single Judge erred in not moulding the reliefs sought in the writ petition. Learned Single Judge, though, held the writ petitioners to be senior to both the direct recruit and promote Assistant Engineers but did not grant any relief with regard to cancellation of the promotion of some of the respondents in the writ petition to the post of Executive Engineer during the subsistence of an order dated June 6, 2022. By such order, this High Court had directed that all steps taken during the pendency of the writ petition would abide by the result thereof. To such proposition, learned advocate for the appellants in A.P.O.T. No.183 of 2024 relied upon **2024**

SCC OnLine SC 2 (Vashist Narayan Kumar v State of Bihar and Ors).

13. Appellants in A.P.O.T. No.183 of 2024 have also challenged the impugned Judgment and Order the learned Single Judge ought to have directed recasting of the gradation list of 2021 under challenge instead of directing preparation of a fresh one. The KMC authorities, taking advantage of the direction for preparation of a fresh gradation list, have come up with a fresh gradation list dated May 24, 2024 excluding the names of respondent Nos. 4, 5, 7 and 8 of the writ petition, since they have been promoted during pendency of the writ petition. Another ground for challenge has been canvassed that while disposing of the writ petition, learned Single Judge did not pass any direction for the benefits of the pay scale of Executive Engineer (Civil) to the writ petitioners with effect from July 6, 2018, in terms of the circular dated December 15, 2009. The private respondents/promotees, junior to the writ petitioners, were granted such benefits with effect from January 28, 2022. In support of his contentions learned advocate for the appellants in

A.P.O.T. No.183 of 2024 also relied upon **(1990) 2 Supreme Court Cases 715 (Direct Recruit Class II Engineering Officers Association v State of Maharashtra and Ors)**, **(1986) 2 Supreme Court Cases 157 (Narender Chadha and Ors v Union of India and Ors)**, **(1996) 10 Supreme Court Cases 177 (D.K. Reddy and Anr. V Union of India and Ors)**, **(1998) 4 Supreme Court Cases 107 (Union of India v Dr. Akhilesh Chandra Agarwal)**, **(2001) 2 Supreme Court Cases 362 (Indian Airlines LTD. And Ors v S. Gopalakrishnan)**, **(2016) SCC OnLine Cal 344 (Sri Kartick Chandra Ghosh and Ors v Kolkata Municipal Corporation)** and an unreported decision dated August 30, 2019 in **APO No. 297 of 2015**.

14. APOT No. 218 of 2024 is at the instance of the direct recruits i.e. respondent Nos. 4 to 12 in the writ petition. It is their contention that the learned Single Judge erred in holding the writ petitioners senior to them in consideration of the fact that the writ petitioners were serving as Assistant Engineer for a pretty long period, at least since 2012. The said appellants submitted that they were directly appointed as Assistant Engineer in 2012

following the regular recruitment process in accordance with law. On the other hand, the writ petitioners were officiating as such in the supernumerary post since 2012, owing to stagnation for want of adequate vacancies. They were adjusted in the cadre of Assistant Engineer, sometimes in 2021, as and when vacancies occurred. Hence, according to the appellants in APOT 218 of 2024, the writ petitioners cannot be construed to have entered into the cadre when they were offered with the benefits of supernumerary posts.

15. In fact, it was contended that, the circular creating the supernumerary posts, itself provided that such posts would be adjusted against regular vacancies, as and when available. It was never intended to create a separate class within a class on the basis of higher qualification and length of service.

16. It was also contended by such appellants that, firstly, regulations relating to enblock seniority, as provided in Calcutta Municipal Corporation (Determination of Seniority) Regulations, 1984, speaks of seniority amongst the promotees and direct recruits belonging to the same year and not of different years.

Secondly, the said Regulations were not approved by the State Government as required. For such reasons, the Regulations of 1984 cannot be adhered to. In support of their contentions, learned advocate for the appellants in APOT No. 218 of 2024 cited **(2008) 15 Supreme Court Cases 332 (P.P.C. Rasani and Ors v Union of India and Ors)** and **(2010) 3 Supreme Court Cases 616 (Ashok Kumar Das and Ors v University of Burdwan and Ors)**.

17. Learned Senior Advocate representing the respondents Kolkata Municipal Corporation and its officials submitted that the writ petitioners were accommodated in the supernumerary post of Assistant Engineer (Civil) in 2012 due to stagnation on account of unavailability of vacancies. While being so posted, they kept lien in the feeder post of Sub-Assistant Engineer so long as they are not absorbed in the promoted cadre as and when vacancy occur. They were finally absorbed against available vacancies in the year 2020-2021. Till then the writ petitioners were not born in the cadre of Assistant Engineer (Civil). On the other hand, the direct recruits were inducted as Assistant Engineer (Civil) in 2012 on the basis of a valid selection process conducted in accordance with

the extant Recruitment Rule/Regulations and born in the cadre in 2012 itself. Therefore, the writ petitioners who were not even born in the cadre cannot claim seniority over the direct recruits.

18. It was also contended that the writ petitioners cannot also claim seniority over the other promotees (respondent Nos. 13 to 34 in the writ petition) as they were senior even in the cadre of Sub-Assistant Engineers. The same seniority positions were maintained in the gradation list for the cadre of Assistant Engineers. Following such seniority position, the aforesaid respondents were regularly promoted to the cadre of Assistant Engineers in the year 2018-2019. Subsequently, the writ petitioners were promoted against regular vacancies of Assistant Engineers in 2020-2021. As such, the writ petitioners cannot claim seniority over the direct recruits or the regular promotees of 2018-2019. In support of his submissions, learned Senior Advocate for KMC has placed reliance upon **(2008) 15 Supreme Court Cases 332 (Dr. P.P.C. Rawani and Ors v Union of India and Ors)**, **(2009) 4 Supreme Court Cases 170 (Union of India v Dharampal and Ors)**, **AIR 1995 SC 962 (Dr. Arundhati Ajit**

Paragaonkar v State of Maharashtra) and (1993) 2 Supreme Court Cases 213(Dr. M.A. Haque and Ors v Union of India).

- 19.** Upon hearing the learned advocate for the parties and on the basis of materials placed before us, it transpires that the main issue which has fallen for our consideration is the interse seniority position of incumbents who have been inducted into the service from the three sources of appointment to the post of Assistant Engineer. It also requires consideration whether appointment to the supernumerary post is or is not a promotion from the date it was given effect to.
- 20.** Appellants in APOT No. 218 of 2024 i.e. respondent Nos. 4 to 12 in the writ petition were directly recruited to the post of Assistant Engineer in the year 2012 following the extant Recruitment Regulations.
- 21.** The appellants in A.P.O. No. 59 of 2024 are the regular promotees to the cadre of Assistant Engineer in 2018-2019 and were placed, in the impugned gradation list published in 2021, above the writ petitioners who obtained regular promotion in the year 2020-2021. Admittedly, the appellants in A.P.O. No. 59 of

2024 except two at Serial Nos. 98 and 99 were senior to the writ petitioners in the gradation list for the cadre of Sub-Assistant Engineers. They were inducted into service in diverse years ranging from 1987 to 1998. The writ petitioners were so inducted in the year 1997 and 1998. On the basis of the gradation list for the cadre of Sub-Assistant Engineers as well as the date of appointment of respective candidates in the cadre of Assistant Engineers, the impugned gradation list was published in the year 2021.

22. According to the case made out by the writ petitioners, they obtained graduation degree much prior to the other regular promotees and on the basis of acquisition of such degree; they were accommodated in the supernumerary post in 2012. Such posts were created in view of stagnation in the promotional channel on account of dearth of sufficient vacancies in the promotional post of Assistant Engineers. The regular promotees i.e. appellants in A.P.O. No. 59 of 2024 obtained such graduation degree much after the writ petitioners. At the relevant point of time, such regular promotees had not put in requisite length of

service and were not qualified to be appointed in the supernumerary post of Assistant Engineers. Nevertheless, such regular promotees were considered for regular promotion to the post of Assistant Engineer prior to the writ petitioners.

23. As noted, there were no vacancies in the promotion posts which left the Sub-Assistant Engineers stagnating over a pretty long time for want of sufficient vacancies in the promotional cadre of Assistant Engineers. In order to surmount the stagnation, the authorities mooted a proposal for creation of supernumerary posts, in order to overcome the stagnating Sub-Assistant Engineers. Such proposal was approved by the authorities and in pursuance thereof Circular dated 03.07.2012 was issued which facilitated grant of the scale of Assistant Engineers to the eligible Sub-Assistant Engineers. It would be pertinent to set out the said circular hereunder for convenience:

ANNEXURE "P-2"

*D.M.C.(P)'S CIRCULAR NO. 19/IIB/2012-13 DATE:
03/07/2012*

Sub; Creation of Supernumerary posts in the rank of Assistant Engineer (Civil Mech. and Elec.) to open promotional avenues for the stated S.A.Es pf K.M.C.

On the recommendation of the Mayor-in-Council under MOA. 32.1 dated 19.04.2012, the Kolkata Municipal Corporation in its meeting dated 20.06.2012 has approved the creation of supplementary posts in the rank of Assistant Engineer to open promotional avenues for the diploma holder and degree holder Sub-Assistant Engineers of the KMC who are stagnating in their career for more than 25 years and 13 years out of which 5 years as post degree SAE respectively owing to lack of enough scope of promotion to the post of Assistant Engineer.

In the light of the above, the Mpl. Commissioner by his order dated 30.06.2012 approved the following for the Implementation of the resolution:

- 1) The diploma holder SAEs who have completed 25 years of service or more in the present post as on 31.12.2011 are to be promoted to the post of Asst. Engineer in their respective discipline by way of creation of supernumerary posts wherever required subject to fulfillment of promotional norms.*
- 2) The degree holder SAEs who have completed 13 years of service or more in the present post out of which 5 years as degree holder SAE as on 31.12.2011 are to be promoted to the post of Asstt. Engineer by way of creation of supernumerary posts wherever, required subject to fulfillment of promotional norms.*
- 3) The said supernumerary posts will be adjusted against the permanent vacancies in regular manner as and when the vacancy becomes available within the sanctioned posts of Assistant Engineer.*

- 4) *At present and at the beginning of each year an exercise will be made by the Personnel Dept. to find out the eligible SAEs for promotion against supernumerary posts completing 25 years as diploma holder SAE and 13 years (5 years with degree) as degree holder SAE, who could not be promoted against the regular posts during the previous year upto 31st December for which Personnel Deptt. will issue Office Orders, by observing necessary criteria and by obtaining necessary approval from the authority.*
- 5) *Three would be no change in the existing R/R for the post of Assistant Engineer.*
- 6) *The pay of the eligible S.A.Es as mentioned above may be fixed as A.E on promotion against supernumerary posts from the date of joining in the post.*
- 7) *The facts relating to the above and with reference to the M-J-C and Mpl. Corporation resolution may be noted in the respective Service Book with paper verification by the concerned IFU.*
- 8) *The pay scale and the post of A.E so awarded to the eligible supernumerary posts as mentioned above may be treated as personal to them for subsequent adjustments against availability of permanent vacancies.*

All concerned are requested to take necessary action immediately in this regard.

*Sd/-
(A. Bandyopadhyay)
Dy. Mpl Commissioner(P)*

24. The said circular dated July 3, 2012 stipulated eligibility for supernumerary AE post for SAEs holding a Diploma in Engineering and having completed twenty-five years of service as also for SAEs holding a Degree having completed thirteen years with at least five years after acquisition of graduation degree. Such circular also provided that there would be no change in the extant Recruitment Regulations and SAEs accommodated in supernumerary post on such qualifications, would be adjusted in the regular post as and when vacancies would arise, following the existing Recruitment Regulations.

25. In pursuance of the aforesaid circular, an office order dated July 5, 2012 was published with list of SAEs who were promoted to the post of AE against supernumerary posts. The writ petitioners having put in requisite number of years of service, post acquisition of bachelor degree, as on the cut date of December 31, 2011, were accommodated in the supernumerary post with effect from 2012 in terms of clause (2) of such circular. They however, kept a lien to their post in the cadre of Sub-Assistant Engineers, so long as they were not promoted in the regular vacancies in

accordance with the extant recruitment regulations. The other promotees i.e. respondent Nos. 13 to 34 in the writ petition, were Diploma holders. They had not put in the requisite 25 years of service as on December 31, 2011, continued to serve in the cadre of Sub-Assistant Engineers. It is in this backdrop, since the writ petitioners were accommodated in the supernumerary post of Assistant Engineers prior to the other regular promotees, the writ petitioner claim seniority over the regular promotees, though, the writ petitioners were juniors to such promotees in the cadre of Sub-Assistant Engineer in relation to respective dates of their initial entry into service.

26. The aforesaid circular dated July 3, 2012 was challenged in a writ petition before the High Court. Learned Single Judge, allowed the writ petition declaring the said circular to be in violation of Article 14 and 16 of the Constitution. However, in appeal, the judgment and order passed by learned Single Judge was set aside by the learned Division Bench upholding the legality and validity of the impugned circular. The matter was carried up to the Hon'ble Supreme Court. The Hon'ble Supreme Court, by its

judgment in Civil Appeal No. 5582 of 2021, upheld the judgment passed by the Hon'ble Division Bench and observed the impugned circular dated July 3, 2012, not to be standing in violation of Article 14 and 16 of the Constitution.

27. It is evident from the recruitment regulations and relevant Circulars governing the service conditions that the post of Sub-Assistant Engineer was the feeder post. An eligible candidate in the cadre of Sub-Assistant Engineer would be entitled to promotion from such post to the next higher post, right up to the post of Chief Engineer with intermediary post of Assistant Engineer and Executive Engineer. The relevant Recruitment Regulations are as follows: -

THE KOLKATA MUNICIPAL CORPORATION

PERSONNEL DEPARTMENT

5, S. N. BANERJEE ROAD, KOLKATA – 13

Date: 20/02.2002

D.M.C.(P)'SCIRCULAR NO./34/2001-2002

Sub: Modification of Recruitment Regulation for the post of Assistant Engineer.

In terms of recommendation of Mayor-in-Council dtd. 19.12.2001, The Kolkata Mpl. Corporation at its meeting dtd. 17.1.02 (Vide Agenda No. 20 and item No. 8) approved the

modification of Recruitment Regulation for the post of Assistant Engineer (Civil), (Mechanical) and (Electrical) u/s 20 of C.M.C. Act 1980 read with section 604 of the Act Ibid.

The complete Recruitment Regulation for the post of Assistant Engineer is as follows:

Method of Recruitment

By promotion from the posts borne in the common cadre for Sub'Asstt. Engineer(C), (M), (E).

50% of the post of total cadre strength of Assistant Engineer shall be filled up by promotion from the post borne in the Common cadre for Sub-Asstt. Engineer having at least 10 year's experience as Sub-Asstt. Engineer.

15% of the post of total cadre strength of Asstt. Engineer shall be filled up by promotion from amongst the S.A.Es having an engineering degree or equivalent from a recognized university; and having at least 10 experience as A.S.E, out of which a minimum of 5 (five) years should be as a degree (or equivalent) holder S.A.E. in respective streams.

By Direct Recruitment through M.S.C.

35% of the total cadre strength shall be filled up by direct recruitment observing necessary formalities.

Qualification for Direct Recruitment

Essential

A degree in Civil/Mechanical/Electrical engineering of a recognized university or its equivalent.

Age not more than 37 years on the 1st January of the year of advertisement.

Desirable

One year's post graduate practical training or study or research or practical engineering experience.

Passing the examination of "O" level in computer application approved by AICTE.

This Circular is issued superseding all the previous Circulars regarding R/R for the post of Asstt. Engineer.

Sd/- Illegible

(S. Chatterjee)

Dy. Municipal Commissioner (P)

28. In view of the case made out by the parties and on the basis of materials place before us, we are to consider the issue viz:-

- (i) Were the writ petitioners accommodated in the supernumerary post of Assistant Engineers and officiating such post for a considerable period would be deemed to have been permanently posted in the cadre of Assistant Engineers or were they required to undergo the process of promotion in accordance with the existing Recruitment Regulations?
- (ii) Was their seniority required to be determined on the basis of the length of service in the cadre of Sub-Assistant Engineers or they derived precedence over the regular promotees on account of additional qualification?

29. The impugned circular, which was upheld up to the level of Hon'ble Supreme Court, sufficiently and unambiguously indicated that the measures were put in place in order to overcome the stagnation in the cadre of Sub-Assistant Engineers and the incumbents were subject to regular promotion in accordance with the extant Recruitment Regulations as and when vacancy occurs. Such circular provided that there would be no change in the existing Recruitment Regulations for the post of Assistant Engineer. In such view of the facts, it is quite evident that creation of supernumerary post was a temporary measure taken with a view to purge the stagnation in the cadre. The authorities never intended to do away with the process of regular promotion by creating the supernumerary posts.
30. It is trite law that the qualification for appointment or promotion to a particular post is considered when the process of such recruitment or promotion is initiated. In **Direct Recruit class II Engineering Officers Association (Supra)**, the Hon'ble Supreme Court laid down that,

“47. To sum up, we hold that:

(A) once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stopgap arrangement, the officitation in such post cannot be taken into account for considering the seniority.

(B) if the initial appointment is not made by following the procedures laid down by the rules but the appointee continues in the post and interruptedly till the regularisation of service in accordance with rules, the period of officiating service will be counted.

(C) when appointments are made from more than one source, it is permissible to fix the ratio for recruitment from the different sources, and if rules are framed in this regard they must ordinarily be followed strictly.

(D)

(E)

(J) the decision dealing with important questions concerning a particular service given after careful consideration should be respected rather than

scrutinised for finding out any possible error. It is not in the interest of service to unsettle a settled position.”

31. Similarly in the case of **Narender Chadha (Supra)**, the Hon’ble Supreme Court noted that,

“21. As observed in D.R. Nim v. Union of India [AIR 1967 SC 1301 : (1967) 2 SCR 325] when an officer has worked for a long period as in this case for nearly fifteen to twenty years in a post and had never been reverted it cannot be held that the officer's continuous officiation was a mere temporary or local or stop-gap arrangement even though the order of appointment may state so. In such circumstances the entire period of officiation has to be counted for seniority. Any other view would be arbitrary and violative of Articles 14 and 16(1) of the Constitution because the temporary service in the post in question is not for a short period intended to meet some emergent or unforeseen circumstances. Clause (b) of Rule 9-C of the Rules which deals with the question of seniority of promotees becomes irrelevant in the circumstances of this case as regards the promotees who have been holding the posts from a long time as stated above.”

32. In the case at hand, however, the situation is otherwise.

The placement in the supernumerary post was not a temporary or

stopgap arrangement. Rather it was provided with a view to do away with the stagnation in the cadre and that was done without following the existing Recruitment Regulations. The beneficiaries knew from the very inception that regular promotion to the next higher stage would be taken up in accordance with the prevalent Regulations. In fact, the Hon'ble Division Bench as well as the Hon'ble Supreme Court, in the earlier round of litigation, considered such placement to be akin to second Career Advancement Scheme. There was no question of reverting back but the regular promotion to the next higher post was within the vision but following the norms.

33. In **D. K. Reddy (Supra)**, Hon'ble Supreme Court noted that the persons holding or accommodated in supernumerary post would not be considered outside the cadre of the post for which such posts were created. Such observations were followed by the Hon'ble Supreme Court in **Akhilesh Chandra Agarwal (Supra)**. In the facts and circumstances of the present case, there is no dispute with regard to the position of supernumerary post holders. The only thing that was contemplated by the authorities is that

supernumerary posts were offered to the persons having a certain qualification at the relevant point of time which was subject to adjustment in due course, in accordance with the Recruitment Regulations at the time when regular promotions were taken up.

34. In **Indian Airlines Ltd. (Supra)**, the Hon'ble Supreme Court observed that,

“5. When in addition to qualification, experience is prescribed, it would only mean acquiring experience after obtaining the necessary qualification and not before obtaining such qualification. In the case of the respondent, he obtained the ITI certificate in the year 1994 and, therefore, did not possess five years of experience as required under the relevant rule. If his qualification as a diploma-holder in Mechanical Engineering is taken note of, he has not completed three years of experience as he got the same in April 1996 and on the relevant date he did not possess such qualification. Indeed in prescribing qualification and experience, it is also made clear in the general information instruction at Item 6 that “experience will be computed after the date of acquiring the necessary qualifications”. Therefore, when this requirement was made very clear that he should have experience only

after acquiring the qualification, the view taken by the High Court to the contrary either by the learned Single Judge or the Division Bench does not stand to reason.

35. The facts of the case at hand are altogether different. The Recruitment Regulations clearly provided an experience of 25 years for Diploma holders and 13 for the Degree holders (with at least five years post acquisition of graduation) for being eligible for promotion to the post of Assistant Engineer. Therefore, the ratio laid down in **Indian Airlines Ltd. (Supra)** cannot be applied in the facts of the present case.

36. The decision in **APOT 297 of 2015 (Supra)** was rendered in the context of promotion to the post of Executive Engineers 60% of which was to be filled up by degree holder Assistant Engineers with six years working experience and the remaining 40% by the Diploma holder Assistant Engineers having six years of working experience. The difference was noted on the basis of date of acquisition of higher qualification. In the instant case, however, the regulation provided two separate streams, one with 25 years of working experience and the other with 13 years for promotion to a common cadre. Moreover, at the time of promotion on the basis of

seniority, the authorities were to look for the prescribed qualification in terms of length of working experience in order to ascertain the eligibility for promotion. The posting in the officiating supernumerary post was never a criteria prescribed for such promotion. Admittedly, the regular promotees were senior to the writ petitioners in the gradation list of the cadre of Sub-Assistant Engineer from inception. It is on such considerations, the earlier gradation list was published in the year 2015 which was never challenged.

37. In **Chandan Banerjee (Supra)**, where the very impugned circular dated July 3, 2012 was under challenge, the Hon'ble Supreme Court observed that,

“42. Another aspect to be considered is that while creating supernumerary posts, KMC has not completely restricted the promotional avenues of diploma- holder SAEs who have stagnated in their service. It has provided adequate opportunity to them to advance in their career, although on different terms and conditions. Thus, the promotional policy of KMC for supernumerary posts is not irrational or arbitrary or to the detriment of diploma holder SAEs.

In matters of public policy and public employment, the legislature or its delegate must be given sufficient room to decide the quality of individuals it seeks to employ as against different positions. As long as these decisions are not arbitrary, this Court must refrain from interfering in the policy domain.

41. Even otherwise, we note that Clause 3 of the impugned circular provides that these supernumerary posts would be adjusted as and when a vacancy becomes available within the sanctioned posts of an AE. Further, Clause 5 stipulates that there would be no change in the Recruitment Regulations for the posts of AE. What this means is that the regular promotion of degree or diploma holder SAEs is not impacted by way of the impugned circular. As and when vacancies arise in the sanctioned AE posts, the AEs holding supernumerary posts would be subject to the Recruitment Regulations and the selection process for promotion of an SAE to an AE. The supernumerary posts are personal to the eligible AEs and will lapse on their being promoted on a regular basis as AEs or ceasing to remain in service.”

38. In **Amarjeet Singh (Supra)**, the Hon'ble Supreme Court noted that,

27. The law permits promotion with retrospective effect only in exceptional circumstances when there has been some legal impediment in making the promotions, like an intervention by the court. An officer cannot be granted seniority prior to his birth in the cadre adversely affecting the seniority of other officers who had been appointed prior to him. "The latecomers to the regular stream cannot steal a march over the early arrivals in the regular queue."

39. In **Vinod Giri (Supra)**, the Hon'ble Supreme Court observed that the promotees were not entitled to count their ad hoc service for the purpose of computing their seniority. Similarly, in **Smt. Imlikokla Longchar (Supra)**, the Supreme Court noted that the time spent as officiating senior lecturer could not be deemed to be the dates of the birth of incumbents in the cadre of senior lecturer.

40. Similar ratio was laid down in the case of **Rashi Mani Mishra (Supra)**, it was noted by the Supreme Court that,

"25. Similarly, the decision of this Court in Rudra Kumar Sain [Rudra Kumar Sain v. Union of India, (2000) 8 SCC 25 : 2000 SCC (L&S) 1055] , relied upon by the learned counsel appearing on behalf of the ad hoc appointees also shall not be applicable to the facts

of the case on hand. In the case before this Court, the promotees appointed on ad hoc were continued for fairly long periods and their appointments were made after due consultation with, or approval of the Service Commission, and therefore their appointments were held not to be ad hoc or fortuitous or stopgap. It is to be noted that in the present case when the ad hoc appointees were appointed in the year 1985, there was no consultation with the UPSC and as such there was no recommendation by the UPSC. Their services came to be regularised as per the 1979 Rules and after they were selected by the Selection Committee constituted under the 1979 Rules, which specifically provides that for the purpose of regularisation of ad hoc appointments, the appointing authority shall constitute a Selection Committee and consultation with the Commission shall not be necessary. It is also to be noted that when the ad hoc appointees were appointed in the year 1985, they were appointed on the basis of the recommendations of the Selection Committee constituted for ad hoc appointments and when subsequently their services were regularised and they were appointed in the year 1989, they were appointed by the order of the Governor. This is one additional ground to hold that their substantive

appointments can be said to be only from the date of their regularisation/appointment made in the year 1989 after their names were recommended by the Selection Committee constituted under the 1979 Rules and their services were regularised as per the 1979 Rules after following the procedure as required under the 1979 Rules i.e. in the year 1989. Therefore, their seniority is to be counted only from 23-2-1989, the date of their regularisation and the services rendered by the ad hoc appointees prior thereto i.e. from the date of their initial appointments in the year 1985 is not to be counted for the purpose of seniority, vis-à-vis, the direct recruits appointed prior to 1989.”

41. In the case of **Shyam Sunder Oberoi (Supra)**, also the Hon’ble Supreme Court laid similar principles and observed that,

“17. We consider it appropriate to observe that the employees who were appointed on ad hoc basis and qualified typing test at the later stage, in absence of the scheme of rules in determining seniority, at least could not have a right to march over such of the employees who were appointed on substantive basis after going through the process of selection for holding regular selection and their right of seniority in no manner be relegated qua such of the ad hoc employees who qualified typing test at a later stage

and regularised subsequently from the date of initial appointment like in the instant case by an Order dated 17-11-2000.”

42. The case of **Katyani Dayal (Supra)**, dealt with appointments in a cadre having permanent as well as temporary posts. The facts of such case, has no bearing with the facts obtaining in the present case. As such, the ratio of said case has no manner of application in the facts and circumstances of the case at hand. So also the case of **Ashok Kumar Das (Supra)** was rendered in the context of a challenge to the resolution adopted by the Executive Council prescribing criteria for promotions. The facts of such case are also absolutely different than that obtaining in the present case.

43. In **P.P.C. Rawani (Supra)** also the Hon'ble Supreme Court considered its decision in **Dr. M. A. Haque (Supra)** and laid down similar principles, that's to say:

“9. The orders dated 9-4-1987 and 29-10-1991 [(1992) 1 SCC 331: 1992 SCC (L&S) 309: (1992) 19 ATC 503] make it clear that this Court did not intend any regularised doctor to steal a march over the regularly appointed doctors, either individually or as

a group. To ensure that the seniority and promotional prospects of regularly recruited doctors were not affected, this Court directed a separate seniority list in respect of the regularised doctors and clarified that their promotions will only be in supernumerary posts to be created. Supernumerary posts are non-cadre permanent posts. They are created to accommodate the lien of officers who are entitled to hold a lien against regular permanent posts. Being ex-cadre posts, no specific duties are attached to them and the officers concerned usually perform duties in some vacant temporary or permanent posts. (Vide D.K. Reddy v. Union of India [(1996) 10 SCC 177: 1996 SCC (L&S) 1386].)

10. If all the ad hoc doctors were to be regularised with effect from the date of their initial appointment, with seniority also from the date of initial appointment, there will be no difference between regular recruitment and regularisation of ad hoc appointments, thereby defeating the very purpose of systematic regular recruitment through UPSC. Ad hoc or stopgap appointees were not normally regularised and given seniority from the date of initial appointment. They were usually given regularisation and seniority only after a certain period of service,

which used to vary from one year to ten years or even more.”

44. In the case of **Dharam Pal (Supra)**, the Supreme Court held that,

“25. It is, however, also well settled that where the initial appointment is only ad hoc, not according to rules and made as a stopgap arrangement, the period of officiation in such post cannot be taken into account for considering the seniority.

26.

27. When an ad hoc appointment is made, the same must be done in terms of the rules for all purposes. If the mandatory provisions of the rules had not been complied with, in terms of Direct Recruit [(1990) 2 SCC 715 : 1990 SCC (L&S) 339 : (1990) 13 ATC 348], the period shall not be taken into consideration for the purpose of reckoning seniority. Furthermore, it is one thing to say that an appointment is made on an ad hoc basis but it is another thing to say that inter se seniority would be determined on the basis laid down in another rule.”

45. Likewise, in **Arundhati Ajit Pargaonkar (Dr) (Supra)** the Hon’ble Supreme Court noted to the following effect that,

“7. Nor the claim of the appellant, that she having worked as Lecturer without break for nine years on the date the advertisement was issued she should be deemed to have been regularised appears to be well founded. Eligibility and continuous working for howsoever long period should not be permitted to overreach the law. Requirement of rules of selection through Commission cannot be substituted by humane considerations. Law must take its course. Consequently the appellant was not entitled to claim that she should have been deemed to have been regularised as she had been working without break for nine years.”

46. As noted above, in the instant case, the writ petitioners were accommodated in supernumerary posts created with a view to overcome stagnation in the cadre of Sub-Assistant Engineers. At the time of such creation, by the impugned circular, it was made explicit that the incumbents in such post would be subject to existing Recruitment Regulations in due course, as and when vacancy arises. Such vacancy first arose in 2017-2018 and the regular promotees who were senior to the writ petitioners in the gradation list of SAEs, were regularized. Again on the occurrence

of vacancy in 2021, the writ petitioners were regularized as per the extant Recruitment Regulations and then born in the cadre of Assistant Engineers. Applying the principles laid down by the Hon'ble Supreme Court, in the aforementioned judgments, the writ petitioners cannot be seen to steal a march over the regular promotees, who, were regularized in the promotional post, as per the Regulations, prior to the writ petitioners. Apparently, the direct recruits born in the cadre of Assistant Engineers in 2012, when they were appointed on regular basis in accordance with the prevailing Recruitment Regulations.

47. The minimum qualification for appointment in the feeder post of Sub- Assistant Engineers was ostensibly a Diploma. The Recruitment Regulations provided for promotion to the post of Assistant Engineers, both of the Diploma holder SAEs and Degree holder SAEs. The candidature of both the regular promotees and the writ petitioners were evaluated at the time of regularization, when the vacancies arose in the cadre of Assistant Engineers on the touchstone of their seniority position in the gradation list of the cadre of SAEs. Nothing has been placed on

record that any ineligible SAE was promoted or regularized. Accordingly, the impugned gradation list for the cadre of Assistant Engineers was prepared and published on July 5, 2021.

48. It transpires from the materials placed before us that during pendency of the writ petition, there was an order passed on June 6, 2022 directing that any steps taken during the pendency of the writ petition shall abide by the result of the same. Relying upon **Vashist Narayan Kumar (Supra)** and **Sri Kartick Chandra Ghosh (Supra)** it was argued that the learned Single Judge ought to have moulded the relief sought in the writ petitioner to annul the promotions given to some of the parties as Executive Engineers. However, in the facts of the case, no such steps were actually warranted.

49. Therefore, in the light of the discussions made hereinabove and applying the ratio laid down by the Hon'ble Supreme Court, we find no fault with the impugned gradation list published on July 5, 2021 or the resolution adopted by the Board of Administrators of KMC at its meeting dated June 29, 2021.

Consequently, the impugned judgment and order is hereby, set aside.

50. In the result, the three appeals being APOT 183 of 2024, APOT 218 of 2024 and APO 59 of 2024 along with the connected applications, if any, are accordingly disposed of without any order as to costs.

51. Urgent photostat certified copy of this order, if applied for, be supplied to the parties on priority basis upon compliance of all formalities.

[MD. SHABBAR RASHIDI, J.]

52. I agree.

[DEBANGSU BASAK, J.]