

**IN THE GAUHATI HIGH COURT**  
(THE HIGH COURT OF ASSAM; NAGALAND; MIZORAM AND ARUNACHAL PRADESH)

**ITANAGAR PERMANENT BENCH**

**(NAHARLAGUN)**

**1. WP (C) 266 (AP) 2016**

**1. Sri Tarak Gongo,**

Son of Late D. Gongo,  
Resident of Gongo Village,  
P.O. & P.S. – Daporijo,  
District – Upper Subansiri,  
Arunachal Pradesh.  
Presently serving as Assistant Engineer,  
Office of the Executive Engineer, Sagalee Division,  
District – Papumpare, Arunachal Pradesh.

.....petitioner.

**-VERSUS-**

**1. The State of Arunachal Pradesh,**

Represented by the Chief Secretary to the Govt. of  
Arunachal Pradesh, Itanagar, Arunachal Pradesh.

**2. Commissioner and Secretary** to the Govt. of

Arunachal Pradesh, Public Works Department,  
Itanagar, Arunachal Pradesh.

**3. The Chief Engineer,** Eastern Zone, Public Works

Department, Highway, Mowb II, Itanagar,  
Arunachal Pradesh.

.....respondents

**2. WP (C) 267 (AP) 2016**

**1. Sri Pema Norbu Khrieme,**

S/o – Late Dorjee Khrieme, Resident of Rupa,  
District – West kameng, Arunachal Pradesh,

Presently serving as Assistant Engineer, Highway Sub – Division, P.W.D. Khonsa, District – Tirap, Arunachal Pradesh.

..... petitioner.

**-VERSUS-**

- 1. The State of Arunachal Pradesh,**  
Represented by the Chief Secretary to the Govt. of Arunachal Pradesh, Itanagar, Arunachal Pradesh.
- 2. Commissioner and Secretary** to the Govt. of Arunachal Pradesh, Public Works Department, Itanagar, Arunachal Pradesh.
- 3. The Chief Engineer,** Eastern Zone, Public Works Department, Highway, Mowb II, Itanagar, Arunachal Pradesh.

.....respondents

By Advocates:

For the petitioner: D. N. Bhattacharya,  
U. Dutta,  
T. Ete.

For the respondents: S. Tapin, Sr. Govt. Advocate.

**:::BEFORE:::**

**HON'BLE MRS. JUSTICE RUMI KUMARI PHUKAN**

Date of hearing : **18.04.2018.**

Date of Judgment : **21.06.2018.**

Heard Mr. D. N. Bhattacharjee and Mr. U. Dutta, learned counsel appearing for both the petitioners in these 2 (two) writ petitions and Mr. S. Tapin, learned Sr. Govt. Advocate for the State.

**Case of the petitioners**

2. Both these matters are taken together for the purpose of disposal as it relates to the same issue. The gist of the case is that both the petitioners,

namely, Pema Norbu Khrieme and Tarak Gongo initially joined in the service as on 23.09.1992 and 24.09.1992 respectively as Junior Engineer (Civil) in the Public Works Department, Govt. of Arunachal Pradesh. By an order dated 19.03.1996, both the petitioners were allowed to officiate as Assistant Engineer (Civil) and by subsequent order passed by the Department and on the strength of the order so passed by this Court, they continued in the said post up-to 14.02.2013. The Govt. of Arunachal Pradesh on recommendation of the DPC vide order dated 14.02.2013 issued by the respondent authority and promoted 39 (thirty nine) nos. of Junior Engineers (Civil) including the petitioners to the post of Assistant Engineer (Civil) w.e.f. the date of recommendation of the DPC dated 21.01.2013 which is according to the petitioners is made without considering their continuous uninterrupted officiating service. They raised their grievances before the authority to consider their long officiating period for counting their seniority but as it was not responded so they have preferred writ petitions before this Court vide WP (C) 339 & 340 (AP) 2014 praying for a direction to the respondent authorities to count their long officiating period from 19.03.1996 to 14.02.2013 for the purpose of seniority in the cadre of Assistant Engineer (Civil). This Court by a common order dated 16.05.2016 referred the matter to the respondent authorities to appreciate all the aspect by taking into account the long continuous service of the petitioners for the purpose of counting their seniority but the respondent authorities has rejected the prayer of the petitioner by its impugned order dated 29.04.2016.

**3].** Being aggrieved with the aforesaid order, present 2 (two) writ petitions has been preferred by the petitioners with a prayer for issuance of a writ of mandamus directing the respondent authorities, more particularly, the respondent No. 2/ the Commissioner & Secretary to the Govt. of Arunachal Pradesh, Public Works Department, Itanagar to count the period rendered by the petitioner as Assistant Engineer (Civil) on officiating basis since 19.03.1996 to 14.02.2013 for reckoning their seniority in the cadre of Assistant Engineer (Civil).

### **Contentions of the writ petitioners.**

4]. The petitioners were initially allowed to officiate as Assistant Engineer (Civil) vide order dated 19.03.1996 for a period of 6 months and, thereafter, they continued uninterruptedly in the same capacity till their regular promotion on 14.02.2013 on recommendation of the DPC. They rendered services as Assistant Engineer (Civil) on officiating basis for more than 16 years continuously, starting from date of his initial officiating promotion upto the date of promotion to the post of Assistant Engineer (Civil) on regular basis. As such, the petitioner has acquired a legal right to claim their seniority in the cadre of Assistant Engineer (Civil) w.e.f. the date of initial appointment to the post of Assistant Engineer (Civil) on officiating basis. Correspondingly, the respondent authorities are also duty bound to consider the long tenure of officiating period rendered by them for the purpose of counting their seniority in the cadre of Assistant Engineer (Civil). It is stated in Paragraph 6 of the impugned order dated 29.04.2016, the respondent authority admitted that the appointment of the petitioners as Assistant Engineer was on ad-hoc basis and it was not done in accordance of the relevant Recruitment Rules. Moreover, in paragraph 25 of the common Judgment and Order dated 16.10.2015 passed in WP (C) 339 & 340 (AP) 2014, this Court observed that the petitioners have been able to prove that they are in continuous service from the date of his appointment on 23.03.1993 and in officiating promotion as on 19.03.1996 without any break. Therefore, the petitioners case are squarely covered by paragraph 47 (B) of the Constitution Bench Judgment and Order of the Hon'ble Supreme Court in *Direct Recruit Class-II Engineering Officers' Association-vs-The State of Maharashtra & Ors.*, reported in (1990) 2 SCC 715. From the materials on record, it is apparent that the petitioners were appointed as Assistant Engineer (Civil) on officiating basis not in accordance with the Recruitment Rules which is a clear admission on the part of the respondent authority and secondly, it was the specific findings of the Hon'ble High Court that the petitioners were in continuous service in the post of Assistant Engineer on officiating appointment from the date of their initial appointment i.e. from 19.03.1996 continuously without

any break. Therefore, the petitioners fulfill the requisite criteria laid down by the Hon'ble Supreme Court in Paragraph 47 (B) of the constitution Bench Judgment and order as aforesaid. Therefore, the learned counsel for the petitioner submitted that it is a fit case where the Hon'ble High Court in exercise of jurisdiction under Article 226 of the Constitution of India may be pleased to issue a writ of certiorari setting aside and quashing the impugned order dated 29.04.2016 passed by the respondent No. 2. Further, it is also prayed for issuance of a writ of mandamus directing the respondent authority, more particularly, the respondent No. 2 to count the period rendered by the petitioner as Assistant Engineer (Civil) on officiating basis.

### **Contention of the State respondents**

**5].** The State respondents have filed their counter affidavit raising a preliminary objection as to the maintainability of the writ petition. It was contended that the writ petition is not maintainable due to non-joinder of necessary party. In support of his contention, it is argued that the writ petition, if allowed, without impleading the Assistant Engineer who were senior to the petitioners in the cadre of Junior Engineer shall adversely affect them. It was also contended that the appointment of the petitioners to the post of Assistant Engineer (Civil) on officiating basis is only a stop-gap arrangement but they continued in the said post for 16 years in the same capacity by intervention of the Hon'ble Court order. It was also argued that the case of the petitioners are covered by paragraph 47 A of the Constitution Bench Judgment and Order of the Hon'ble Supreme Court in *Direct Recruit Class-II Engineering Officers' Association-vs- the State of Maharashtra & Ors.*, reported in (1990) 2 SCC 715. For negating findings of the Hon'ble Court in common Judgment and Order dated 16.10.2015 passed in WP (C) 339 & 340 (AP) 2014, the learned State counsel re-argued on the facts of the previous case i.e. WP (C) 339 & 340 (AP) 2014 and submitted that in the aforesaid cases, the State respondents did not file any affidavit. Therefore, it is permissible to re-appreciate the fact of the aforesaid cases. Further, the learned State counsel relied paragraph 16 of the judgment and order dated

22.05.2009 passed in WP (C) 1382/2006 and argued that in the event of such promotion conferred to them had the affect of causing supersession of a large number of seniors. Relying on the Judgment and order passed in *Uma Devi* reported in (2006) 4 SCC 1, it is argued the present case is squarely covered by the said Judgment and Order. The learned counsel in support of his case relied the Judgment and Order passed by the Hon'ble Supreme Court in *State of West Bengal-vs-Aghore Nath Dey*, reported in (1993) 3 SCC 371 and accordingly argued that corollary expressly excludes the category of cases where initial appointment is only on ad-hoc and not according to rules being made only as a stop-gap arrangement. Further, the learned State counsel relied the Judgment and Order passed by the Hon'ble Supreme Court in *State of Haryana-vs-Vijay Singh*, reported in (2012) 8 SCC 633 and argued that since the petitioners were appointed purely on ad-hoc basis and continued as such till the date of their regularization, their service from the date of initial ad-hoc appointment cannot be counted for the purpose of their seniority. The decisions relied by the State counsel are: (1) (2006) 4 SCC 1 (*State of Karnataka-vs-Uma Devi*, (2) (1993) 3 SCC 371 (*State of W.B. &Ors.,-vs-Aghore Nath Dey & Ors.*)& (3) (2012) 8 SCC 633 (*State of Haryana-vs-Vijay Singh*).

#### **Reply to the argument advanced by the State respondents**

**6].** So far the preliminary objection raised with regard to the non-joinder of necessary party, the learned counsel for the petitioners states that the conspectus of the impugments made in this writ petition is claiming relief from the State of Arunachal Pradesh for counting their seniority w.e.f. the date of their continuous officiation in the post of Assistant Engineer. The petitioner has not claimed any relief against any individual. Having regard to the judicially evolved principle Qua, the relief sought for, the presence of Assistant Engineer who were senior to the petitioners is not required for a fair, complete and final adjudication of the issue involved in this writ petition. The learned counsel for the petitioner argued that the contention of the State respondents that the appointment of the petitioners to the post of Assistant Engineer on officiating basis is only a stop-gap arrangement is misconceived

as the Office Memorandum dated 31.07.1996 was issued conveying the decision of the State Government to stop the practice of making ad-hoc appointments and fixing cut off date as 31.07.1996. It was also decided to maintain Status-quo in respect of employees appointed upto 31.07.1996 and allowed to continue provisionally in officiating capacity instead of ad-hoc capacity against the posts hold by them. Further, 16 years of continuous service cannot be said to be an ad-hoc/stop-gap arrangement as per ratio laid down in *Narender Chadha Vs. Union of India*, reported in (1986) 2 SCC 157. It was also argued that the Hon'ble High Court observed in paragraph 20 of the common Judgment and Order dated 16/10/2015 that from the various orders the interest of the petitioner was well protected in the sense that they are allowed to continue in the same officiating post of promotion. In view of the order so passed as well as the documents so relied upon by the petitioners and the decision so rendered by the Court it can be at best hold that the petitioners are in continuous service in the same post as Assistant Engineer.

**7].** With regard to the contention of the state respondents that petitioner is covered by paragraph 47 A of the Constitution Bench Judgment and Order of the Hon'ble Supreme Court in *Direct Recruit Class II Engineering Officers' Association Vs. The State of Maharashtra & Ors.*, reported in (1990) 2 SCC 715, the learned counsel for the petitioner submitted that in paragraph 6 of the impugned order dated 29/04/2016 the respondent authority admitted that the appointment of the petitioner as Assistant Engineer was on ad-hoc basis and it was not done in accordance of the relevant Recruitment Rules. It is also stated that the Office Memorandum dated 19/09/1996 was issued prohibiting ad-hoc appointments and fixing cut off date as 31/07/1996. It was also decided to maintain status-quo in respect of employees appointed upto 31/07/1996 and allowed to continue provisionally in officiating capacity instead of ad-hoc capacity against the posts hold by them. Moreover, in paragraph 25 of the common Judgment and Order dated 16/10/2015 passed in W.P. (C) 339 (AP) 2014 and W.P. (C) No. 340 (AP) 2014 the Hon'ble Court observed that the petitioner have been able to prove that they are in continuous service from the date of officiating promotion as on 19/03/1996 without any break. Therefore, the petitioners case is squarely covered by

paragraph 47 (B) of the Constitution Bench Judgment and Order of the Hon'ble Supreme Court in *Direct Recruit Class II Engineering Officers' Association Vs. The State of Maharashtra & Ors.* Reported in (1990) 2 SCC 715 and the contention of the State respondent in this regard is misplaced.

**8].** The State counsel argued on facts of earlier cases also. It is argued by the learned counsel for the petitioner that facts of earlier cases could not be re-open on two counts – (i) The common Judgment and Order dated 16/10/2015 passed in W.P. (C) No. 339 (AP) 2014 and W.P. (C) No. 340 (AP) 2014, has attained finality as no review/appeal has been preferred by the state respondent against the aforesaid Judgment and Order and as such re-opening would be barred by the principle of res-judicata. (ii) the affect of non-filing of affidavit-in-opposition would amount to admission of facts pleaded in the writ petition.

**9].** Controverting the argument of the state counsel relying on the Judgment and Order dated 22/05/2009 passed in W.P. (C) No. 1382 (AP) 2006 that in the event of such promotion conferred to them had the affect of causing supersession of a large number of seniors, the learned counsel for the petitioner submits that in spite of the aforesaid Order the authority did not undertaken any action and the petitioners were allowed to continue as such in the officiating capacity till their regularization. As such, this aspect has already been considered vide common Judgment and Order dated 16/10/2015 passed in W.P. (C) 339 (AP) 2014 and W.P. (C) No. 340 (AP) 2014 and attain finality which cannot be re-open now and is hit by the principle of res-judicata.

**10].** It is stated by the learned counsel for the petitioners that the decisions relied upon by the state respondent are not at all relevant in the facts and circumstances of the case. In Uma Devi case the Hon'ble court dealt with regularization of casual and work charged employees which were not appointed by following the due process of constructional scheme. The decision of Aghore Nath Dey was already considered in the earlier round of litigations while arriving the findings. Further, in the case of the State of Haryana Vs. Vijay Singh, the Hon'ble Court dealt with the period of ad-hoc appointment for the purpose of counting seniority. But in the instant case the

Office Memorandum dated 19/09/1996 converted all ad-hoc appointment up to 31/07/1996 into officiating appointment. Therefore, the Judgment relied by the state respondent has no bearing in this writ petition.

**11].** Further the learned counsel for the petitioner submits that the respondent authority in total disregard and in utter violation of the Hon'ble Court is Order passed the impugned order rejecting the claim of the petitioners. As such, the impugned order is not-est in law and liable to be set aside and quashed. Further, the respondent authority, more particularly, the respondent No. 2 may be directed to count the long, continuous period rendered by the petitioners as Assistant Engineer (Civil) on officiating basis i.e. from 19/03/1996 to 14/0/2013 for reckoning their seniority in the cadre of Assistant Engineer (Civil).

**The Decisions Relied by the Petitioner :-**

1. (1990) 2 SCC 715(Para – 13, 35 and 47)  
(Direct Recruit Class II Engineering Officers Association)
2. (1986) 2 SCC 157 (Para – 15 and 25)  
(Narender ChadhaVs. Union of India)
3. AIR 1963 SC 786 (Para – 7)  
(Udit Narayan-Vs-Board of Revenue)
4. (1974) 4 SCC 601 (Para 15)  
(G.M South Central Railways-Vs-A.V.R.Siddhantti)
5. (1983) 3 SCC 601 (Para-36)  
(A. Janardana-Vs-Union of India)
6. (1985) Supply SCC 432 (Para-23)  
(B. Prabhakar Rao-Vs-State of A.P)
7. (1986) 1 GLR 367 (Para-12)  
(Dilip Kumar Dutta-Vs-State of Tripura)
8. (2012) 2 GLT 893 (Para-11,12,13,14,15,16,17,18,19 and 20)  
(SapamJiten Singh-Vs-Manipur Public Service Commission)
9. AIR 1960 SC 941 (Para-7)  
(Satyadhan Gosh-Vs-Smti.Deojin Debi)
10. (2011)3SCC 408 (Para-23&25)  
(M.Nagabhushana-Vs-State of Karnataka)
11. (2005)1SCC 787 (Para-30 & 31)  
(Bhanu Kumar Jain-Vs-Archana Kumar)
12. (2014) 5 SCC 75 (Para-39 & 40)  
(Dr.Subramanium Swami-Vs-State of Tamilnadu)
13. (2008) Supply GLT 539 (Para-2)(Tilak Ch. Das-Vs-Union of India).

## **FINDINGS BY THE COURT.**

**12].** I have considered the rival contention of both the parties and gone through the decision relied on by the parties. Concerned file of the department is also consulted with the learned Govt. Advocate, Mr. Tapin and the file reflects the following status of the petitioners.

24.09.1992	Petitioner was appointed as Junior Engineer
19.03.1996	Petitioner promoted as Assistant engineer on adhoc basis[Page-13 of writ petition]
29.10.1998	Petitioner reverted to Junior Engineer [Page-14 of Affidavit in opposition]  Reversion Order 29.10.1998 was challenged vide C.R. No. 5776/1098 renumbered as WP[C] No. 883/2001 [Referred in para-6 of the WP[C] No. 340[AP]/2014[Shri Tarak Gongo and others Vs. State of A.P. and others]
24.05.2000	C.R. No. 5776/1098 renumbered as WP[C] No. 883/2001 along with other writ petitioners [filed by senior junior engineers] were disposed of directing the respondents to examine the cases of the petitioners and to take decision thereon.  [Referred in para-7 of the WP[C] No. 340[AP]/2017[Shri Tarak Gongo and others Vs. State of A.P and others]
09.05.2001	After consideration of the petition's case along with others the petitioner was reverted to the post of Junior Engineer. [Annexure-H of the WP[C] No. 340[AP]/2014]  W.P[C] No. 881/2001, W.P[C] No. 882/2001 and W.P[C] No. 883/2001 were filed challenging the reversion order dated 09.05.2001. [Referred in para-8 of the WP[C] No. 340[A.P]/2014]
25.05.2002	Vide common judgment the W.P[C] No. 881/2001, W.P[C] No. 882/2001 and W.P[C] No. 883/2001 were disposed of with direction to place the cases of the petitioners before the DPC for consideration. [Referred in para-9 of the W.P[C] No. 340[A.P]/2004]  Common judgment dated 25.05.2002 was appealed vide W.A. No. 361/2002, W.A. No. 532/2002 and W.A. No. 533/2002
24.06.2002	W.A. No. 361/2002, W.A. No. 532/2002 and W.A. no. 533/2002 were dismissed.
04.07.2002	The petitioner along with others similarly situated persons were reverted back to their substantive post of Junior Engineer for the third time. [Referred in para-11 of the W.P[C] No. 340[AP]/2014]

- Reversion order dated 04.07.2002 was again challenged vide W.P[C] No. 392/2002, W.P[C] No. 393/2002 and W.P[C] No. 394/2002 [Referred in para-11 of the WP[C] No. 340[AP]/2014]
- 04.07.2002 W.P[C] No. 392/2002, W.P[C] No. 393/2002 and W.P[C] No. 394/2002 dismissed on withdrawn
- 15.07.2003 Petitioner was regularized [Referred in para-11 of the WP[C] No. 340[AP]/2014]
- Regularization order dated 15.07.2003 proposed to be cancelled and also was challenged by the Junior Engineers who were senior to the petitioner vide W.P[C] No. 234/2004, W.P[C] No. 249/2004 and W.P[C] No. 226/2004.
- 23.03.2005 Vide common Judgment the matter was remanded back to the authority to consider the issue again and to pass necessary order. [Referred in para-12 of the WP[C] No. 340[A.P]/2014]
- 15.02.2006 After through examination the petitioner along with two others similarly situated persons were reverted back to the post of Junior Engineer for the 4<sup>th</sup> time. [Annexure-N of the WP[C] No. 340[A.P]/2014]
- Reversion order dated 15.02.2006 was challenged vide W.P[C] No. 1335/2006, W.P[C] No. 1382/2006 and also W.P[C] No. 145/2009 was filed by other junior engineer.
- 22.05.2009 W.P[C] No. 1335/2006, W.P[C] No. 1382/2006 and also W.P[C] No. 145/2009 were disposed of to consider the issue again [Annexure-E of the Affidavit in Opposition of the present case]
- 18.02.2013 DPC was held and the petitioner along with all other eligible candidate were given regular promotion to the post of Assistant Engineer giving seniority from the date of SPC[18.02.2013]. [Annexure-C of the Affidavit in Opposition of the present case]
- W.P[C] No. 339/2014, W.P[C] No. 340/2014 was filed challenging the DPC dated 18.02.2013 on the ground that the seniority of the petitioner be counted from the date of adhoc promotion i.e., 19.03.1996.
- 16.10.2015 Vide common judgment and order the W.P[C] No. 339/2014 and W.P[C] No. 340/2014 were disposed of with direction to consider the representation of the petitioner
- 29.04.2016 The representation dated 02.11.2015 submitted by the petitioner was considered and thereby rejected the same by holding that the seniority of the petitioner cannot be counted from the date of adhoc promotion on the following grounds:
- i. The adhoc promotion was purely a stop-gap arrangement for a period of 6 months.
  - ii. If promotion is given from the date of adhoc promotion then many admittedly seniors will be affected.

iii. Period of adhoc promotion without following recruitment rule cannot be counted for seniority as held by the Hon'ble Apex Court in Direct Recruitment Class II Engineering Officers' Association Vs. State of Maharashtra and others.

And by present two writ petitions the order dated 29.04.2016 is being challenged claiming seniority from the date of adhoc promotion.

**13].** There is no dispute as regards the nature of appointment of the petitioners and that they were reverted by the department on several occasions and also about the several round of litigations between the parties. Now the claim of the petitioners is that they are entitled for promotion from the date of their officiating promotion on 19.03.1996, due to long continuous service in terms of provision 44 (B) of Direct Recruitment Cases whereas according to the respondent, the petitioners are not entitled to such promotion from the date of their officiating promotion but they are entitled only from the findings of DPC dated 21.01.2013.

**14].** The issue therefore before this Court is whether the contention of the learned counsel for petitioners, Mr. Bhattacharjee is correct in his submission that the case falls within the ambit of the conclusion 44(B) of the Judgment passed in *1990 2 SCC 715, Direct Recruitment Class II Engineers* (supra) case. The submission of the learned counsel for the State is that this case falls not within the conclusion of 44(B) but the corollary mentioned in conclusion 44(A) of the decision. The conclusions A and B which alone are material for deciding the issue before this Court is quoted below –

***" (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 stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.***

***(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation***

***of his service in accordance with the rules, the period of officiating service will be counted.”***

**15].** The constitution bench in Maharashtra Engineers case while dealing with the Narender Chadha (supra) emphasised the unusual fact that the promotees in question, has worked continuously for long periods nearly 15 to 20 years on the post without being reverted and then proceed to state the principle thus.

*“We therefore confirmed the principle of counting towards seniority period of continuous officiation following an appointment made in accordance with the rules prescribed for regular substantive appointment in the service.”*  
*The constitution bench having dealt with Narender Chadha in this manner to indicate the above principle that decision cannot be construed to apply where the initial appointment was not according to the rules.”*

**16].** The judgment of Apex Court in the Direct Recruit Class II Engineering Officers Association (supra), particularly the proposition of 44(A) and 44(B) laid down in the aforesaid judgment has been amplified and elaborated in the subsequent decision of the Apex Court in case of *State of West Bengal Vs. Aghore Nath 1993 SCC (3) 371*, the relevant observation extracted below-

*“We shall now deal with conclusions (A) and (B) of the constitution bench in the Maharashtra Engineers' case, quoted above.*

*There can be no doubt that these two conclusions have to be read harmoniously, and conclusion (B) can not cover cases which are expressly excluded by conclusion (A). We may, therefore, first refer to conclusion (A). It is clear from conclusion (A) that to enable seniority to be counted from the date of initial appointment and not according to the date of confirmation, the incumbent of the post has to be initially appointed ,according to rules'. The corollary set out in conclusion (A), then is, that 'where the initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such posts cannot be taken into account for considering the seniority. Thus, the corollary in conclusion (A) expressly excludes the category of cases where the initial appointment is only ad hoc and not according to rules, being made only as a stop-gap arrangement. The case of the writ petitioners squarely falls within this corollary in conclusion (A), which says that the officiation in such posts cannot be taken into account for counting the seniority. This being the obvious inference from conclusion (A), the question is whether the present case can also fall within conclusion (B) which deals with cases in which period of officiating service will be counted for seniority. We have no doubt that conclusion (B) cannot include, within its ambit, those cases which are expressly covered by the*

corollary in conclusion (A), since the two conclusions cannot be read in conflict with each other.

*The question therefore, is of the category which would be covered by conclusion (B) excluding therefrom the cases covered by the corollary in conclusion (A). In our opinion the conclusion (B) was added to cover a different kind of situation, wherein the appointments are otherwise regular, except for the deficiency of certain procedural requirements laid down by the rules. This is clear from the opening words of the conclusion (B), namely, 'if the initial appointment is not made by following the procedure laid down by the rules' and the later expression 'till the regularisation of his service in accordance with the rules'. We read conclusion (B), and it must be so read to re-council with conclusion (A), to cover the cases where the initial appointment is made against an existing vacancy, not limited to a fixed period of time or purpose by the appointment order itself, and is made subject to the deficiency in the procedural requirements prescribed by the rules for adjudging suitability of the appointee for the post being cured at the time of regularisation, the appointee being eligible and qualified in every manner for a regular appointment on the date of initial appointment in such cases. Decision about the nature of the appointment, for determining whether it falls in this category, has to be made on the basis of the terms of the initial appointment itself and the provisions in the rules. In such cases, the deficiency in the procedural requirements laid down by the rules has to be cured at the first available opportunity, without any default of the employee, and the appointee must continue in the post uninterruptedly till the regularisation of his service, in accordance with the rules. In such cases, the appointee is not to blame for the deficiency in the procedural requirements under the rules at the time of his initial appointment, and the appointment not-being limited to a fixed period of time is intended to be a regular appointment, subject to the remaining procedural requirements of the rules being fulfilled at the earliest. In such cases also, if there be any delay in curing the defects on account of any fault of the appointee, the appointee would not get the full benefit of the earlier period on account of his default, the benefit being confined only to the period for which he is not to blame. This category of cases is different from those covered by the corollary in conclusion (A) which relates to appointment only on ad hoc basis as a stop-gap arrangement and not according to rules. It is, therefore, not correct to say, that the present cases can fall within the ambit of conclusion (B), even though they are squarely covered by the corollary in conclusion (A)."*

Thus the Hon'ble Apex Court in above manner set at rest the confusion, if any, between the corollary to the proposition "A" and "B". The proposition "A" has been held to be applicable to those cases where the initial appointment was purely ad hoc and made by way of stop-gap arrangement. Proposition "B" has been explained to cover to all such appointment, where,

in making the appointments the procedure prescribed by the rule has been followed.

**17].** Adverting to the facts of the present case, what is clearly noticeable is that both petitioners was appointed as Junior Engineer on 23.09.1992 and 24.09.1992 and they were promoted as Assistant Engineer as on 19.03.1996. Now let us see the order of appointment (vide Annexure A) of the incumbents which read as follows-

*"The Governor of Arunachal Pradesh is pleased to allow the following Junior Engineer (C) to officiate as Assistant Engineer (C) for a period of 6 months in the time scale of pay of Rs. 2000-60-2300-EB-75-3200-100-3500 p.m. plus other allowances as admissible under rules from time to time in the interest of public service w.e.f. the date of their joining to the post subject to clearance of public service commission in due course for regular appointment as Assistant Engineer*

1. Redam Jini, JE(C)
2. Tarak Gongo, JE(C)
3. Sri P. N. Khrame, JE(C)

*This officiating promotion of above officers shall not confer upon them any right to claim seniority in future for regular appointment.*

*This officiating promotion of may be terminated and the officials will be reverted to his original post at any time without assigning any reason there after completion.*

*The other terms and conditions of this officiating promotion which are not specified here in shall be governed by the terms and conditions and relevant orders of the Govt. in force from time to time."*

Aforesaid order clearly indicate that they allowed to officiate only for 6 months and they will be reverted back to their original post after completion of 6 months and they cannot claim the seniority for regular appointment. After issuance of such order, the Govt. of Arunachal Pradesh barred such ad hoc appointment and by circular dated 31.07.1996 and 19.09.1996, however, with a direction to maintain status quo provisionally as regard the employees appointed up to 31.07.1996 with a direction to place the matter of all ad hoc promotion before the DPC for consideration in strict compliance of the rules. Although the ad hoc services of the petitioners extended for 3 months on

17.09.1996 and for further 6 months w.e.f. 19.12.1996 to 30.06.1997 with similar terms and conditions as earlier but by an order dated 29.10.1998, passed by the Secretary, PWD to the Govt. of Arunachal Pradesh, Itanagar, the petitioners were reverted to their substantive post with immediate effect in following manner.

*“Whereas, the governor of Arunachal Pradesh was pleased to promote following JE(C) of A.P. PWD to the post of Assistant Engineer (C) on adhoc basis for a period of 6 (six) months vide Govt. order of even number dated 18.03.96 and 19.03.96 due to exigency of works in the Deptt. Considering their degree qualifications.*

1. *Sri Redam Jini*
2. *Sri Tarak Gongo*
3. *Sri P. N. Khrieme*
4. *Sri. P. D. Thungon*

*Whereas their adhoc services have been extended by the Govt. vide order No. SPWD-334/88-89/Pt II dated 23.03.97 upto 30.06.97 in view of the continuing exigencies of work.*

*Whereas in view of the Hon'ble High Court, Guwahati verdicts banning adhoc appointment & promotions and the general dissatisfaction among JEs senior to the above named officers and who have not been considered to adhoc promotion and which was given rise to number of court cases against these four adhoc promotions leading to displeasure expressed by Hon'ble High court, Guwahati, the government has decided not to grant any extension of adhoc services in respect of the above 4 (four) officers beyond 30.06.97.*

*Now, the government has decided not to further extend the adhoc services in respect of the above 4 (four) Junior Engineers of AP PWD. Hence they stand reverted to their substantive posts with immediate effect.”*

The aforesaid order of reversion was challenged by the petitioners by way of filing writ petitions and there was several rounds of litigations before this Court whenever the petitioners were reverted to their original post (all detail has been mentioned above). As directed by this Court finally DPC was held to consider the case of the petitioners along with all other eligible candidates for regular promotion to the post of Assistant Engineer and the

promotion of the petitioners were regularised by the DPC w.e.f. 18.02.2013. While the said order of DPC was challenged by the petitioner by way of filing WP(C) No. 339/2014 and WP(C) No. 340/2014, the same were disposed of with a direction to consider the representation of petitioner who prayed for seniority from the date of their ad hoc promotion. Pursuant thereto, the DPC was held on 29.04.2016 and passed the following order.

*"GOVERNMENT OF ARUNACHAL PRADESH  
PUBLIC WORKS DEPARTMENT  
A.P. CIVIL SECRETARIAT  
ITANAGAR*

ORDER

*Dated Itanagar, the 29<sup>th</sup> April, 2016*

*No. SPWD-286/2014PT WHEREAS, the Departmental Promotion meeting was held on 26.01.2016 to consider the representation of Shri Tarak Gongo, Assistant Engineer and Shri P. N. Khrimy, Assistant Engineer dated 02/11/2015 submitted in pursuance to order of Hon'ble High Court dated 16/10/2015 in WP(C) No. 399(AP)2014 and WP(C) No. 340(AP)2014.*

2. *AND WHEREAS, the substance of his representation is that they should be given seniority from the date of officiating appointment on 19/03/1996 and not from the date of DPC recommendation dated 21/01/2013. They have cited the following grounds for counting of seniority from the date of officiating appointment, i.e. 19/03/1996.*

- a. They have been on officiating without interruption as Assistant Engineer with effect from 19/03/1996.*
- b. Their cases are covered by the office memorandum No. 16/91 dated 31/07/1996 providing for regularization of adhoc appointments/promotions.*
- c. Their cases are squarely covered by the judgment of the Hon'ble Supreme Court in Narender Chadha Vrs. Union of India and Direct Recruit Class-II Engineering Officers's Association Vrs. State of Maharashtra and others.*

3. *AND WHEREAS, perusal of the speaking order dated 15/02/2006 passed by the then Commissioner (PWD), Govt. of Arunachal Pradesh which was affirmed by the Division Bench of Hon'ble High Court in its Judgment and Order dated 22/05/2009 reveals that on 19/03/1996, when Shri Tarak Gongo and Shri P. N. Khrimy, the petitioners were promoted on adhoc basis as Assistant Engineer, they were junior to 467 Junior Engineers in the Seniority list. It is clear from this fact that they were allowed to officiate as Assistant Engineer on adhoc basis to the prejudice of 467 incumbents of whom 45(forty five) Juniors Engineers belonged to APST.*

4. *AND WHEREAS, the Committee is firmly of the view that their adhoc appointment as Assistant Engineer was purely a stop-gap arrangement and this case is*

*squarely covered by para 44 (A) of the Judgment and Order of the Hon'ble Supreme court of India in the case of Direct Recruit Class-II Engineering officers' Association Vrs. State of Maharastra & others dated 02/05/1990. The said para is reproduced below.*

*(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 confirmation. The corollary of the above rule is that where the initial appointment is only adhoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority list".*

- 5. AND WHEREAS, the DPC is further of the view that application of para 44(B) of the said Judgment and Order will seriously militate against the interest of their seniors totalling 467 by being unfair and iniquitous.*
- 6. AND WHEREAS, the DPC has also taken note of the fact that when they were appointed on adhoc basis as Assistant Engineer, both were far below in the seniority list and did not come even within the zone of consideration. Their appointment as Assistant Engineer on adhoc basis was not done according to provisions of Recruitment Rules. If both Shri Tarak Gongo and Shri P. N. Khrimey are allowed seniority from the date of appointment, it will amount to double jeopardy to his seniors who have been given regular promotion as per recommendation of the DPC that met on 21/01/2013 on the basis of seniority cum fitness, reservation policy of the Government etc. with effect from the date of DPC recommendation.*
- 7. NOW THEREFORE, the Governor of Arunachal Pradesh is of the considered view that the recommendation of Group-A DPC which met on 21/01/2013 is just and fair and there is no ground to depart from their recommendation. The representation of Shri Tarak Gongo, Assistant Engineer and Shri P. N. Khrimey, Assistant Engineer for counting of their seniority from the date of his adhoc appointment are without merit and therefore rejected.*

*Sd/-  
(Tajom Taloh)  
Commissioner (PWD)  
Govt. of Arunachal Pradesh  
Itanagar"*

**18].** On due examination of the aforesaid order two fold aspect has surfaced which is vital for consideration. Firstly the petitioners were allowed to hold the post of Assistant Engineer on officiating basis on adhoc arrangement and they not even come to the zone of consideration for promotion. On the next, there is a large number of officers as many as 467 in numbers who are entitled to the post of Assistant Engineer and consideration of case of petitioner will cause prejudice to the large number of senior officers who are much senior to the petitioners.

**19].** The petitioners have not disputed the aforesaid findings of the DPC but their contention is that their long 16 service cannot be a stop-gap arrangement and their position will be covered by the provision of Section 44 (B) of the Direct Recruitment Case (supra) and the DPC has wrongly held that their case will be covered by the provision of Section 44(A) of the decision.

**20].** Now whether the long continuous service is a sole criteria to promote the petitioners from the date of their officiating appointment has already been dealt with in the decision of the Division Bench in WP(C) No. 1382, order dated 15.02.2016. The said writ petition was also moved by the present petitioners along with two others in the year 2006 on a similar challenge. This Court observed as below -

*" The aforesaid facts, though not altogether irrelevant, cannot override the determination that has already been made to the effect that the petitioners by virtue of their seniority in the cadre of Junior Engineer were not entitled to promotion either on officiating or on regular basis to the next higher post of Assistant Engineer. The petitioners are presently continuing in the post of Assistant Engineer under orders of the Court. As the petitioners have continued for long and they must have come up to higher levels of seniority, while affirming the order dated 15.02.2006 in so far as the petitioners in WP(C) Nos. 138/2006 and 145/2009 are concerned, we are of the view that their continuance in the post of Assistant Engineer on officiating basis is a matter that should be left to be determined by the authorities of the state. The authorities of the state in doing so will take into account the fact as to whether if the petitioners are to be allowed to continue on officiating basis any prejudice will be caused to any of their seniors. If such prejudice is caused to any senior, naturally, such officiating arrangement will not be allowed. However, in the event of no such prejudice results, the authorities will be at liberty to allow the petitioners to continue in the post of Assistant Engineer on officiating basis."*

**21].** The observations made above still have a bearing on the issue. As has been discussed above, many a times whenever the petitioners were reverted to their initial posting they came up with litigation and some sort of interim protection was granted to the petitioners till disposal of those writ petitions. There can be no escape that the petitioners are continuing the post of Assistant Engineer due to the interim order passed by the Court on time to

time. In the process it was made to appear that they are continuing in the said post for a long period which was also observed by this Court while disposing the earlier cases WP(C) 349(AP)/2014 and WP(C)340(AP)/2014. The aforesaid cases of course were not decided on merit and the matter was left to be decided by the respondent authority by holding DPC. The learned counsel for the petitioner has now pressing upon the observation of this Court vide para 25 of the judgment, that they are in continuous service. However, by the said judgment this Court finally referred the matter to the respondent authorities to appreciate all aspect by holding DPC, also by taking into account the qualifying period of promotion as per recruitment rules, and also by preparing seniority list with a direction to re-consider the representation filed by the petitioners. Therefore, merely an observation made by this Court cannot be said that the case has attained its finality.

**22].** Moreover another vital aspect to be noted that while moving the earlier writ petition, the petitioners did not reflect the whole picture as to how many times they are reverted to their original post by the respondent authority. On the hand the respondent authority also did not produce the relevant file of petitioner and no affidavit was also filed on last occasions. As such, this time the court directed the respondent authority to produce the concern file before this Court and also to file affidavit. Than only the whole picture brought on record that the petitioner were reverted to the original post on several occasions as discussed above and on each occasion the petitioner turn into litigation and on the strength of interim order passed by the Court, they continued to hold the post. All earlier cases were remanded to the respondent authority to decide the matter by holding DPC as regard matter of regularisation, promotion, seniority etc. During such course of earlier round of litigation, the officiating promotion of the petitioners was given effect and still not satisfied on the date of regularisation of their promotion, the petitioner has come forward with such fresh litigations which is pending before this Court.

**23].** Further, the OM dated 19.09.1996, whereby Governor of the State of Arunachal Pradesh prohibited the ad hoc promotion subject to consideration of earlier persons already allowed to officiate, does not, ipso-facto create any

legal right on the part of petitioner to claim seniority to the post of Assistant Engineer, whereas their appointment was not made as per Recruitment Rule.

**24].** As per direction given in the WP(C) 339/2014 and WP(C) 340/2014, the DPC was held, seniority list was prepared and recruitment rule was considered and in the order of the DPC as mentioned above, has discussed all the above aspects that there are large number of seniors above these two petitioners and they are even not in the zone of consideration for such promotion as per recruitment rules and as such, regularization of the petitioners to such promotional post will not only dehor the recruitment rules but will also cause serious prejudice to the senior officers above the petitioners. Such a finding of DPC is found to have made with all proper reasoning having regard to the recruitment rules. The service of petitioners have already been regularized in the year 2013 and in such backdrop of the case, the claim of the petitioners continuous "uninterrupted" service is not at all proper to rest their case within the purview of the provision of 44(B) of the judgment of Direct Recruitment (supra). The marked difference in the aforesaid provision of A and B lies in different situations. According to A, where initial appointment is only on adhoc and not according to rules and was made as stop-gap arrangement, the officiation of such post cannot be taken into account for considering the seniority, is applicable to the petitioners as because the very nature of their appointment to the post Assistant Engineer indicates it was not according to the rules but was a stop-gap arrangement. On the other hand, the claim of the petitioner that they are working in the said post uninterruptedly till regularization holds no good as because the official record (as discussed above) and the affidavit now filed by the respondent authorities clearly indicates that their appointment was stop-gap arrangement for 6 months, 3 months and like manner with a declaration that they cannot claim seniority on such adhoc appointment (which is discussed above). There is no denial on such factual aspect on the part of the present petitioners that they were reverted on many occasions to their earlier post, and only because of their litigations and on the strength of the Court order, they are allowed to continue by the respondent authority. In my considered opinion, such a continuous service although prevail for a long span of years but it is not an "uninterrupted" one. The dictionary meaning of the

“uninterrupted” is without break and unblocked. The petitioner herein has suppressed the factum of several times reversion by the respondent authority which has come up only in this round of litigation and in such eventuality, their service cannot be termed as “uninterrupted.” Thus case of the petitioner will come within the purview of Section 44(A) of the aforesaid judgment of Direct Recruitment. Such a continuous service will not bestow any unfettered right upon the petitioners to claim seniority over the large number of employees who were not even impleaded in this case. The respondent authority is not under an obligation to do anything which will not only de hors the recruitment rules but will also cause serious prejudice to other employees who are much more senior to the petitioners. This Court cannot ignore the aforesaid factual position that has been brought to the notice by way of producing the relevant official file and the rule etc.

**25].** A Writ Court cannot sit as an appellate Court over the DPC and such Court can only oversee as to whether proper procedure was followed by the DPC. Hon’ble Supreme Court in 1999 (1) SCC 566 Municipal Board, Saharanpur Versus Imperial Tobacco Company Of India Limited, 2004 3 SCC 682 Ranjeet Singh Versus Ravi Prakash, 2008 4 SCC 451 B.K Muniraju Vs. State of Karnataka and others discussed about scope of issuance of writ under Article 226 and 227 of the Constitution. It has been held that the High Court cannot act like appellate Court and re-appreciate and evaluate the evidence while exercising certiorari or supervisory jurisdiction only a patent error, which does not require establishment by lengthy and complicated arguments or by long-drawn process of reasoning, held is amenable to certiorari jurisdiction.

**26.]** Observation of B.K Muniraju (supra)is extracted below:

*" It is settled law that a writ of certiorari can only be issued in exercise of extraordinary jurisdiction which is different from appellate jurisdiction. The writ jurisdiction extends only to cases where orders are passed by inferior courts or tribunals or authorities in excess of their jurisdiction or as a result of their refusal to exercise jurisdiction vested in them or they act illegally or improperly in the exercise of their jurisdiction causing grave miscarriage of justice. In regard to a finding of fact recorded by an inferior tribunal or authority, a writ of certiorari can be issued only if in recording such a*

*finding, the tribunal/authority has acted on evidence which is legally inadmissible, or has refused to admit an admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law. It is needless to mention that a pure error of fact, however grave, cannot be corrected by a writ."*

**26].** It is discernible that the respondent authority has duly hold the DPC and there is no any infirmities in the impugned order of the respondent authority. The materials on record would not disclose any conceivable reason as to why the case of the petitioners should be considered for regular promotion since the date of their joining while they were not even qualified for the promotion as per rules.

In view of foregoing discussions, both the writ petitions are hereby dismissed.

**JUDGE**

Lipak