



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

WP(C) 480 (AP)/2013

Shri Komen Zirido & Anr.

.....*Petitioners*

-Versus-

State of A.P. & Ors.

.....Respondents

For the Petitioners : Mr. P.K. Tiwari, Sr. Advocate
Mr. D. Panging, Advocate

For the Respondents : Mr. I. Choudhury, Sr. Advocate
Mr. T. Jini, Advocate

**BEFORE
THE HON'BLE MR. JUSTICE MIR ALFAZ ALI
THE HON'BLE MR. SANJAY KUMAR MEDHI**

Decided on : 01.03.2019

JUDGMENT & ORDER

(Mir Alfaz Ali, J)

This application under Article 226 of the Constitution has been filed by the petitioners praying for quashing the order vide No. ED.2/APT/137/2003 dated 06.10.2006 issued by the Director of School Education, Government of Arunachal Pradesh, whereby the respondents No. 3 & 4 were appointed to the post of Senior Teacher (Political Science) and Senior Teacher (English) respectively. The petitioners also sought for direction to the respondent authority not to place the respondents No. 3 & 4 above the petitioners and other similarly situated persons in the common seniority list.

FACTUAL BACK GROUND:

2. The petitioners were appointed as direct recruit senior teachers on contractual basis in the year 2002 and 2004 respectively. Subsequently, the service of the petitioners was regularized vide order dated 26.05.2004 and

05.02.2005 respectively, on the basis of the recommendation of the Departmental Promotion Committee (DPC). While the petitioners were discharging their duties to the satisfaction of all concerned, the legality of the regularization of the service of the petitioners as well as the other direct recruit senior teachers were challenged by a group of promotee senior teachers, including the respondents No. 3 & 4, by filing writ petition being WP(C) 171(AP)/2009. Learned Single Judge disposed of the said writ petition by the judgment and order dated 03.06.2010, holding, that the process of regularization of service of the petitioners was illegal and beyond the scope of the Rules of 1973.

3. Aggrieved by judgment and order dated 03.06.2010 passed by the learned Single Judge, the private respondents in WP(C) 171(AP)/2009 including the present petitioners preferred writ appeals being W.A. 9(AP)/2010 and W.A. 10(AP)/2010. The Division Bench of this Court while disposing the writ appeal vide judgment and order dated 30.04.2010, partially modified the judgment and order dated 03.06.2010 and directed, that the appointment of the private respondents in WP(C) 171(AP)/2009, including the petitioners (herein) should not be disturbed. The Division Bench also ruled that the petitioners herein and the other respondents in WP(C) 171(AP)/2009 be placed below the writ petitioners in (WP(C) No.171/2009), in the gradation list of senior teachers.

4. Pursuant to the judgment and order dated 30.04.2012 rendered by the Hon'ble Division Bench, a common seniority list of senior teachers was prepared and the petitioners and other senior teachers, who were initially appointed on contractual basis were placed below the promote senior teachers, who were the petitioners in WP(C) 171(AP)/2009, vide notification No. ED2/CC/439/2009(Pt) dated 10.09.2012. However, the private respondents were not placed above the petitioners and other senior teachers and as such, they filed a contempt petition being Cont. Case 33/2012. In the meantime, the petitioners came to learn through information furnished under the Right to Information Act, that the respondents No. 3 & 4 were illegally

appointed as senior teachers from the panel list, after the advertised posts were already filled up by selected persons, as per the select list, prepared on the basis of merit. Therefore, the present petitioners preferred a review petition before the Hon'ble Division Bench, being Review Petition No. 56/2013, for review of the judgment and order dated 30.04.2012 passed in W.A. No. 09(AP)/2010 and also praying for excluding the respondents No. 3 & 4 from the ambit of reliefs, given in the judgment and order dated 30.04.2012, on the ground, that the respondents No. 3 & 4 had misled the Court, by not disclosing, that they were direct recruit teachers, and had in fact, given an impression to the court, that they were also promotee senior teachers. The Hon'ble Division Bench, rejected the review petition holding that no case for review could be made out. However, while dismissing the review petition, the Division Bench observed that it would be open for the petitioners herein, to challenge the legality and validity of the appointment of the respondents No. 3 & 4 in an appropriate proceeding, if so advised. This is how, the present petitioners have filed the instant writ petition challenging the validity and legality of the appointment of the respondents No. 3 & 4.

5. It has been alleged in the writ petition, that the respondent No, 2 issued an advertisement bearing No. ED2/APT/137/2003 dated 12.04.2006 for filling up, amongst others, one post each of Senior Teacher (English) and Senior Teacher (Political Science), in the pay scale of Rs. 6500-200-10,500/- per month. Pursuant to the said advertisement dated 12.04.2006, many candidates including the respondents No. 3 & 4 submitted applications. The respondent No. 3 applied for the post of Senior Teacher (Political Science) and respondent No. 4 applied for the post of Senior Teacher (English). After due selection process, the respondent No. 2, vide circular No. ED2/APT/137/2003 dated 27.09.2006, published the list of selected candidates for all the posts, advertised on 12.04.2006. As per the select list published vide circular dated 27.09.2006, one Smt. Yabyang Angu Padi was selected for the post of Senior Teacher (English) and one Shri Tage Gambo

was selected for the post of Senior Teacher (Political Science) and accordingly, both of them were appointed. The respondent No. 2 vide another circular bearing No. ED2/APT/137/2003 dated 28.09.2006 published a panel list (waiting list), for each post advertised, vide advertisement dated 12.04.2006. In the said panel list, the names of the respondents No. 3 & 4 were in serial number one against the respective posts. It is averred, that as the vacancies advertised on 12.04.2006 were already filled up, the respondent No. 2 could not have appointed the respondents No. 3 & 4 against those vacancies, and as such, the appointment of the respondents No. 3 & 4 from the panel (waiting) list was for extraneous consideration and therefore, illegal and deserves to be set aside.

6. The case of the respondents No. 3 & 4 as stated in paragraph 13 of the counter affidavit is that the vacancies were available even before the select list was made. One Sri Y.P. Singh, Senior Teacher (English) retired on 30.06.2001 and this vacancy, due to inadvertence was not included in the advertisement. The 2nd vacancy in Senior Teacher (Political Science) became available, when Senior Teacher A.K. Singh resigned and was released on 10.05.2006. Accordingly the answering respondents (respondent Nos.3 & 4) were appointed within a week from the date of preparation of the panel on 28.09.2006, which was valid for one year.

7. In paragraph-18 of the counter affidavit, the respondents No. 3 & 4 stated, that the Government of Arunachal Pradesh took the policy decision to prepare and keep a panel from amongst the selected candidates, in order of their inter-se merit, and if any vacancy arises within a year (i.e., the lifetime of the panel list), then the appointments shall be made from the said panel. Having taken such a policy decision, the Government has resorted to appointments in terms of the said policy decision, which was not contrary to the statutory Rules, framed in the year 1973. This is permissible in law and does not violate any one's right. As stated above, two posts were available for appointment even before the select list dated 27.09.2006 was made and

published and the respondent Nos. 3 and 4 having secured second position in the competitive examination conducted by the authority, in their respective subjects, were rightly appointed as Senior Teachers. Their appointments cannot be compared with the appointments of the writ petitioners, which were in clear violation of the Recruitment Rules, 1973 and as such both the respondent Nos. 3 and 4 were entitled to be placed above the petitioners in the seniority list in terms of the judgment and order dated 30.04.2012, passed in WA 09(AP)/2010.

8. The stand of the state respondents No. 1 & 2 is that the respondents No. 3 & 4 were appointed from the waiting list, prepared by the department through recruitment process, pursuant to the advertisement No. ED.2/APT/137/2003 dated 12.04.2006. The advertisement was made for recruitment to the post of Senior Teacher (Political Science) one post and Senior Teacher (English)-one post. The department kept the panel of wait list of Senior Teacher (English) and Senior Teacher (Political Science) with the consideration, that frequent advertisement for the post of Senior Teacher could not be possible, as it has financial and material involvement, besides, academic loss of the students. The state respondents further stated, that Smt. Yabyang Angu Padi and Sri Tage Gambu, who were selected for the post of Senior Teacher (English) and Senior Teacher (Political Science), as per advertisement vide ED2/APT/137/2003 dated 12.04.2006, were appointed against the vacancies, arose due to retirement of C.K. Tamang, Senior Teacher (English) and promotion of Sri Takio Tunglo, Senior Teacher (Political Science) to the post of Headmaster, whereas, respondents No. 3 & 4 were appointed from the wait list against the clear vacancies, arose due to resignation of Sri A.K. Singh, Senior Teacher (Political Science) and retirement of Sri Y.P. Singh, Senior Teacher (English).

9. In the additional affidavit filed by the respondents No. 3 & 4, it has been stated, that the respondent No. 3 was appointed on 06.10.2006 against the clear vacancy arose on 10.05.2006 due to resignation of one Shri A.K.

Singh. The said A.K. Singh was on deputation in Navodaya Vidyalaya, Darrang, since 15.10.2003 and thereafter he applied for recruitment to Navodaya Vidyalaya and his application was forwarded by the Director of School Education, Government of Arunachal Pradesh, on 19.08.2005. Subsequently, on 25.04.2006, said A.K. Singh was recruited in Navodaya Vidyalaya Samiti and as such, he tendered his formal resignation on 08.05.2006 and accordingly, he was released from service vide order dated 10.05.2006. The respondent No. 4 was also appointed to the post of Senior Teacher (English) the same day i.e., 06.10.2006 against the existing and clear vacancy, which arose on 30.09.2001 upon retirement of Shri Y.K. Singh.

SUBMISSIONS MADE BY THE COUNSEL

10. We have heard learned Senior Counsel Mr. P.K. Tiwari, assisted by learned counsel Mr. D. Panging for the petitioner and learned Senior Counsel Mr. I. Choudhury, assisted by learned counsel Mr. T. Jini for the respondents No. 3 & 4 and learned Standing Counsel Sri. T. Jamoh for the State respondent Nos.1 & 2.

11. Mr. P.K. Tiwari, learned Sr. Counsel, submitted, that as per the advertisement dated 12.04.2006, there was only one vacancy for the post of Senior Teacher (English) and one vacancy for the post of Senior Teacher (Political Science) and both the posts were filled up by candidates, selected pursuant to the advertisement. After filling of both the vacancies, as per the advertisement, there was no vacancy, and as such, the appointment of the respondents No. 3 & 4 made by the authority from the wait list without any vacancy or against any future vacancy was illegal and nullity for being violative of Articles 14 and 16 of the Constitution, submits Mr. Tiwari. Mr. Tiwari, further contended that the appointments of respondent No. 3 & 4 being illegal and nullity, such appointments, which was void ab-initio could not even be saved by order of the Court. Referring to the advertisement dated 12.04.2006, Mr. Tiwari contended that there was no variation clause in the advertisement, and as such, the respondents No. 3 & 4 could not have

been appointed after the advertised vacancies were filled up from the selected candidates. To buttress the submission, Mr. Tiwari placed reliance on a decision of the Apex Court in ***Rakhi Ray & Ors. Vs. High Court of Delhi*** reported in ***(2010) 2 SCC 637***.

12. Per contra, Mr. I. Choudhury, learned Sr. Counsel for the respondents submitted, that the vacancies, against which the respondents No. 3 & 4 were appointed, were not future vacancies, inasmuch as, the vacancies against which the respondents No. 3 & 4 were appointed were existing and/or prospective vacancies and only due to inadvertence, such vacancies could not be included in the advertisement. Mr. Choudhury contended, that the penal (wait list) was published on the very next day of publication of the select list, keeping in view those clear vacancies. The panel (wait list) having been published on the basis of merit, in the same selection process, by which, the select list was prepared and the vacancies filled up by the candidates from the penal (wait list), not being future vacancies, there was no question of violation of Article 14 & 16 of the Constitution, inasmuch as, there could hardly be any scope of further applicants, who became eligible subsequently to make applications for those posts, submits, Mr. Choudhury. Mr. Choudhury further submitted, referring to annexure D series appended to the additional affidavit-in-opposition by respondents No. 3 & 4, that it has been and is the practice in the State of Arunachal Pradesh in the department of Education, to prepare a waiting list for a definite period, so that, in the event any prospective vacancy arises because of retirement, resignation, death and on any other contingency, can be filled up from such waiting list, in order to avoid the cumbersome and lengthy selection process and also to save time and resource, besides protecting the academic interest of the students. Mr. Choudhury also contended, that the wait list was prepared on the basis of merit, through the same selection process, undertaken pursuant to advertisement dated 12.04.2006 and the same was valid for one year and therefore, the appointments made from the said Wait List during its validity period, against the vacancy which were already in existence and/or

anticipated, can by no stretch of imagination be held to be illegal. In support of his submission, Mr. Choudhury placed reliance on a three Judges Bench decision of the Apex Court in ***Dr. Uma Kant & Anr. Vs. Dr. Bhika Lal Jain & Anr.*** reported in ***(1992) 1 SCC 105.***

13. Mr. I. Choudhury, further contended, that the legality of the appointment of the respondents having not been challenged in the earlier set of litigation, the present writ petition is also barred by principle of constructive res-judicata. Resisting the alternative prayer made in the writ petition for placing the writ petitioners above the respondent Nos.3 & 4 in the seniority list, Mr. Choudhury submitted, that the seniority list having not been challenged, consequence of such seniority list cannot be assailed in the present writ petition. Placing reliance on a decision of the Apex Court in ***K.D. Sharma Vs. Steel Authority of India Ltd. & Ors.*** reported in ***(2008) 12 SCC 481***, it was also submitted by Mr. I. Choudhury, that the writ petition is liable to be dismissed for suppressing material facts.

14. Another argument advanced by Mr. I Choudhury, learned counsel for the respondents No. 3 & 4, which has also been adopted by the learned counsel for the State respondent, was that the practice of preparing and publishing wait list and making appointment from such waiting list against anticipated vacancy has been in vogue in the Education Department, Government of Arunachal Pradesh, from long time and numerous appointments have been made from such reserved or waiting list, inasmuch as, such practice has an element of public interest attached to it, as it saves a lot of public money and public time and also serves the benefit of the student. Referring to various panel or waiting list since 2009 and appointments made from such wait list, being annexure 'D' series to the additional affidavit of the respondents No. 3 & 4, Mr. Choudhury submits, that consequence of unsettling the appointments of respondent Nos.3 & 4 after such a long time, may be disastrous, inasmuch as, in that case all the appointments so far made, from the wait list for long time, as a matter of practice, if becomes assailable, it will create a chaotic situation.

15. From the nature of controversy raised in this writ petition and the rival submission made by the learned counsels, the questions, which arises for consideration in this writ petition are, whether the vacancy against which the respondents No. 3 & 4 were appointed were future vacancy and (ii) whether the appointment of the respondent Nos.3 & 4 from the Wait List, within its validity period was illegal.

DECISION AND REASON THEREOF:

16. In **Rakhi Ray** (supra), relied by Mr. P.K. Tiwari, learned Sr. Counsel for the petitioner, the law has been summarized in para-12 of the judgment as under:

"In view of above, the law can be summarised to the effect that any appointment made beyond the number of vacancies advertised is without jurisdiction, being violative of Articles 14 and 16(1) of the Constitution of India, thus, a nullity, inexecutable and unenforceable in law. In case the vacancies notified stand filled up, process of selection comes to an end. Waiting list etc. cannot be used as a reservoir, to fill up the vacancy which comes into existence after the issuance of notification/advertisement. The unexhausted select list/waiting list becomes meaningless and cannot be pressed in service any more."

17. In **Dr. Uma Kant** (supra), the Apex Court extensively dealt with the appointment from Wait List or Reserved List. In the said case, the University of Rajasthan invited applications for the post of professor in the department of Botany and after following the process of interview selected one Dr. GS Nathwat for the post of professor in Botany on 20.06.1989. The name of Dr. Uma Kant was kept in the reserved list by the selection committee. Accordingly, Dr. Nathwat was appointed in the said post, however, Dr. Nathwat retired on September, 30, 1989 and Dr. Uma Kant, who was already selected and kept in the reserved list, was appointed as Professor in the department of Botany. The appointment of Dr. Uma Kant as well as the constitution of selection committee was put to challenge before the High

Court. Hon'ble Single Judge, held that the constitution of the selection committee was valid, but as regards the appointment of Dr. Uma Kant, from the reserved list, it was held that once a person selected by the selection committee had been appointed, the reserved list stood exhausted and the person named in the reserved list could not be appointed against a future vacancy and thus, the appointment of Dr. Uma Kant was held illegal. On appeal, a division bench of the Rajasthan High Court upheld the findings of the learned single Judge. Against the judgment of the Division Bench, an appeal was preferred before the Hon'ble Apex Court and the Apex Court allowing the appeal held as under:

"7.

..... *In our view the High Court was wrong in taking the view that a regular vacancy of Professor having arisen on the retirement of Dr. G.S. Nathawat on 30th September, 1989 again a fresh Selection Committee should have been constituted and no appointment on such post could have been made from the reserve list prepared by the Selection Committee on 20th June, 1989. Section 6(4) clearly provided for the preparation of reserve list to the extent of 50% of the vacancies in the post of teachers or officers for which the Selection Committee was constituted. It is not in dispute that the main list and the reserve list prepared by the Selection Committee on 20th June, 1989 were approved by the Syndicate. We agree with the contention of the university that a reserve list is always prepared to meet the contingency of anticipated or future vacancies caused on account of resignation, retirement, promotion or otherwise. This is done in view of the fact that it takes a long time in constituting a fresh Selection Committee which has a cumbersome procedure and in order to avoid ad-hoc appointments keeping in view the interest of the student community. The Selection Committee in the present case was constituted for the selection of Professor in Botany and such Selection Committee had approved and recommended the name of the appellant Dr. Urea Kant in the reserve list finding him suitable for appointment on the post of Professor in Botany. The Syndicate which is the highest executive body in the university had also approved the name of Dr. Uma Kant in the reserve list which remained valid upto one year and we cannot accept the contention raised on behalf of the respondents that the reserve list is exhausted as soon as the person recommended in the main list joined the post. In the present case Dr. G.S. Nathawat was selected on 20th June, 1989 and was going to retire on 30th September, 1989 and in these circumstances it was perfectly valid to select one more person and to keep him in the reserve list for being appointed on the regular vacancy which was shortly anticipated on account of retirement of Dr. Nathawat. The High Court committed a clear error in restricting the scope of reserve*

list only against the post for which the selection was made and which according to the High Court could only be available to the incumbent in the reserve list if the person recommended in the main list did not join such post.

8.
..... In our view the very purpose of preparing a reserve list would be defeated if the view taken by the High Court is accepted that once a person selected by the selection committee has joined that post then selection made by the Committee is exhausted and the reserve list is of no avail and becomes extinct. There was no meaning or purpose of keeping the reserve list alive for a long period of one year, as no person selected for the post can at all be expected not to join for such a long period of one year.

9. If we examine the matter from another angle, it would be clear that according to the university such a procedure is in vogue in all the universities of Rajasthan that a reserve list is used for the appointment on a vacant post caused during the validity period of the reserve list, and numerous appointments had been made in the last decade from the reserve list. The university has also submitted that if the view taken by the High Court is held to be correct, it will create chaotic situation in the university as all appointments so far made from the reserve list will become assailable. It is well settled that in matters relating to educational institutions, if two interpretations are possible, the courts would ordinarily be reluctant to accept that interpretation which would upset and reverse the long course of action and decision taken by such educational authorities and would accept the interpretation made by such educational authorities."

18. Coming to the facts of the present case, Annexure-13 to the writ petition shows, that the relevant advertisement for filling up the posts of Senior Teacher, Laboratory Assistant etc. was made on 12.04.2006. Pursuant to such advertisement, selection process was undertaken and a select list on the basis of merit, was notified vide circular dated 27.09.2006 (Annexure-14). In the select list published Vide Directorate order No. ED2/APT/137/2003 dated 27.09.2006, Smt. Yabyang Angu Padi was selected for the post of Senior Teacher (English) and Shri Tage Gambo was selected for the post of Senior Teacher (Political Science). Immediately after publishing the select list on 27.09.2006, a panel list was published making it valid for one year, from the date of declaration of result, vide notification No. ED2/APT/137/2003. The panel list dated 28.09.2006 was also prepared in the same selection process,

same selection process, on the basis of merit and for the post of Senior Teacher (English), four candidates were kept in the panel list, where, the respondent No. 4, Smt. Ribom Basar was in serial No. 1. Similarly seven candidates were placed in the wait list for the post of Senior Teacher (Political Science) and the respondent No. 3 Smt. Liter Bagra was at serial No. 1. Subsequently, the respondent No. 3 was appointed temporarily as Senior Teacher (Political Science) on 06.10.2006, against the vacancy arose due to resignation of one Sri A.K. Singh, who was on deputation to Navodaya Vodyalaya since 2003 and submitted his formal resignation on 08.05.2006 and he was released from service on 11.05.2010. The respondent No. 4 was appointed on 06.10.2006 as Senior Teacher (English), against the vacancy arose due to retirement of one Sri Y.K. Singh, who retired from service on 30.06.2001 i.e. prior to the date of advertisement. Apparently both the appointments were made during the validity period of the penal list.

19. Annexure-C to the additional affidavit of the respondents No. 3 & 4 shows, that Sri Y.K. Singh retired from service on 30.06.2001. It is also evident from the application (Annexure-3 to the affidavit-in-opposition) submitted by Shri A.K. Singh praying for his release, that though, he submitted the application for formal release on 08.05.2006, and he was released on 11.05.2006, in fact, he was on deputation in Navodaya Vidyalaya, Darrang, since 15.10.2003 and the said post was lying vacant since then. It is also evident that application of Sri A.K. Singh for appointment in Navodaya Vidyalaya was forwarded to the Director of Secondary Education, on 19.08.2005 and as such, apparently the process of his absorption in Nabodaya Vidyalaya was initiated in the month of august 2005. What is abundantly clear from the above is that the vacancy against which the respondent No. 4 was appointed, arose on 30.06.2001, prior to the date of advertisement and as such it was not a future vacancy, rather, a clear existing vacancy. The vacancy against which, the respondent No. 3 was appointed, though, technically fell vacant on 11.05.2006, the post was, in fact, lying vacant since 2003, as the incumbent Shri A.K. Singh was on

deputation since 15.10.2003. Therefore, though, the post held by Shri A.K. Singh technically fell vacant on 11.05.2006, before publishing the select list, in fact, the post was lying vacant since 2003 because of Shri A.K. Singh being on deputation and it was an anticipated vacancy. Evidently, the select list was published on 27.09.2006 and the panel list (waiting list) was published on 28.09.2006. It is the case of the respondent authorities, that they authority could realize, that one post of Senior Teacher (English) was already lying vacant since 2001, which were not included in the advertisement and the another post of Senior Teacher (Political Science) was also in fact, lying vacant for long time, due to deputation of the incumbent, which ultimately fell vacant on 11.05.2006, only after less than a month of the advertisement and much before the preparation of select list, and as such, prepared the panel (wait) list as per prevalent practice, keeping in view the two vacancies, one being existing and the other anticipated. It is true, that both the posts could have been included in the advertisement dated 12.04.2006, perhaps due to inadvertence, those two posts were not included in the advertisement and therefore, immediately on the next day of publication of select list, the panel list was prepared on the basis of the same selection process. In view of the above facts and circumstances, the two vacancies against which the respondents No. 3 & 4 were appointed were apparently existing and anticipated vacancy, which cannot be called future vacancy. Therefore, on factual matrix of the present case, in our considered view, the decision of the Apex Court in **Rakhi Ray** (supra) is distinguishable. Further, having regard to the practice prevalent for long time, in the Education Department, Government of Arunachal Pradesh, as reflected in Annexure-D series as indicated above, the appointment of the respondents No. 3 & 4 from the wait list, within its validity period, against the existing and anticipated vacancy, the present case, in our considered view is fully covered by the ratio laid down by the Apex Court in Dr. Uma Kant (supra), inasmuch as, the facts situation of this case are akin to Dr. Umakant's case. Therefore, the appointment of respondent Nos.3 & 4 from the panel list within its validity period in the facts situation of the case, cannot be held to be illegal.

20. Looking from another angle, the respondents Nos.3 & 4 were appointed in the month of October, 2006 as per the wait list prepared on the basis of same selection process, pursuant to the advertisement made on 12.04.2006. However, such appointment of respondents Nos.3 & 4 were never challenged till filing of the review petition before the Division Bench in the year 2013 or till the liberty was given by the Division Bench. Learned counsel for the petitioner contended that the petitioners were not aware of the appointment of respondents Nos.3 & 4 and they came to know about the alleged illegality or irregularity only after getting the information furnished under the Right to Information Act and after preparation of the seniority list pursuant to the order of the Division Bench. Admittedly, the petitioners were initially appointed on contractual basis during the year 2002 & 2004 respectively and since then, they were in the service and within the same system, and as such, the argument advanced by Mr. Tiwari, that the petitioners could know about the alleged illegal appointment of the respondents Nos.3 & 4 only through information supplied by the authority, pursuant to their application under the Right to Information, does not appear to be appealing. Therefore, on this count also, after more than a decade, the appointment of the respondents No. 3 & 4 cannot be interfered.

21. For the reasons stated above, both the questions are answered in negative and in favour of the respondents.

22. Having answered the basic issues as above, the question of constructive res-judicata or suppression of material facts etc as argued by Mr. Choudhury becomes mere academic and as such, we do not feel the necessity of addressing such points in detailed. Suffice it to say, that having regard to the nature of controversy raised in the instant petition and issues involved in the earlier round of litigations, the bar of constructive resjudicata

may not apply in this case nor the petitioner can be blamed for suppressing materials facts.

23. As regards the alternative prayer of the petitioners, that they be placed above the respondent Nos.3 & 4 in the seniority list, the submission of Mr. Choudhury that the seniority list prepared long back pursuant to the direction of this court in the W.A. 9/2012, having not been challenged, the petitioner cannot claim their seniority above the respondent Nos.3 & 4 without challenging the seniority list seems to be preponderous. Evidently, the petitioners were initially appointed on contractual basis and subsequently, their service was regularized and this Court, in spite of holding the regularization of the petitioners illegal, allowed the petitioners to continue in service following the ratio of *Rafiquddin's* case. Be that as it may, even if it is assumed for the sake of argument, that there was some irregularity in the appointment of the respondent Nos.3 & 4, (we have already held otherwise) for that matter also, the petitioners do not stand on a better footing, so far the question of seniority of the petitioners vis-à-vis the respondents No. 3 & 4 is concerned and therefore, they cannot be allowed to steal a march over the respondents No. 3 & 4 even on the principle of regular and irregular appointment, in absence of challenge to the seniority list in question.

24. In view of what has been discussed hereinabove, the writ petition is held to be without merit and accordingly dismissed.

JUDGE

JUDGE

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