

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

ITANAGAR PERMANENT BENCH

WP(C)765(AP)2017

Smti. Likha Rina, Assistant O/o the Department of Panchayati
Raj, Govt. of Arunachal Pradesh, Itanagar.

.....petitioner.

-VERSUS-

1. The State of Arunachal Pradesh

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

2. The Commissioner/Secretary, Panchayati Raj Govt. of
Arunachal Pradesh, Itanagar.

3. The Director, Panchayati Raj Govt. of Arunachal Pradesh,
Itanagar.

4. The Commissioner/Secretary, Administrative Reforms
Department, Govt. of Arunachal Pradesh, Itanagar.

5. Shri Debajit Pegu, Assistant O/o the Department of Panchayati
Raj, Govt. of Arunachal Pradesh, itanagar.

.....respondents.

By Advocates:

For the **petitioner:**

Mr. H. Lampu

For the **respondents:**

Mr. S. Tapin, (Govt. Advocate)
Mr. R. Sonar, (Respondent No. 5)

:::BEFORE:::
HON'BLE MR. JUSTICE SONGKHUPCHUNG SERTO

Date of hearing : **26.04.2019**

Date of judgment : **02.05.2019**

JUDGMENT & ORDER (CAV)

Heard Mr. H. Lamphu, learned counsel appearing for the petitioner. Also heard Mr. S. Tapin, learned Sr. Govt. Advocate appearing for the State respondents and Mr. R. Sonar, learned counsel appearing for the private respondent No. 5.

2. This is an application under Article 226 of the Constitution of India, challenging the final seniority list of Assistants in the Department of Panchayati Raj circulated vide circular No.PR-112/2002/648 dated 25.08.2017 issued by the Secretary, Panchayati Raj, Got. of Arunachal Pradesh, wherein, the private respondent No. 5 was placed at serial No. 1 and the petitioner was placed at serial No. 2 of the same.

3. The brief facts and circumstances which has led to the filing of this writ petition are as given below:

(i). Vide order No. PR-46/2004 dated 10.01.2005 issued by the Director (PR) Government of Arunachal Pradesh, the petitioner who was serving as UDC following issuance of her appointment order dated 08.08.2002 on officiating basis was regularised in that post on the recommendation of the DPC held on 07.01.2005 w.e.f. the date the DPC was held. Thereafter, vide Order No. PR-129/2005 dated 10.10.2006 issued by the Director of Panchayati Raj, Government of Arunachal Pradesh, she was appointed as an Assistant on officiating capacity w.e.f. 10.10.2006 vice Shri T. Tapak,

Assistant who was appointed as Superintendent temporarily with the following terms and conditions:

(a). That her officiating appointment shall not confer any right to claim for regular appointment to the post of Assistant and shall not count for the purpose of seniority in that grade.

(b). That her appointment was subject to regularisation through the Departmental Promotion Committee in due course.

(c). That the other terms and conditions which are not specified in the order shall be governed by the Rules and orders that may be in force from time to time.

(ii). On 08.09.2011 a DPC was held in the office chamber of the Director(P.R) for considering regularisation and promotion of 3(three) Group-B, Non Gazetted Ministerial staff of the Department of Panchayati Raj. The 3(three) persons who were considered are (i). Ms. Likha Rina (the petitioner), (ii). Shri Debajit Pegu (private respondent No. 5) and (iii). Shri H. Rime. After considering the records, the board recommended regularisation of promotion of the petitioner to the post of Assistant and promotion of private respondent to the same post w.e.f. the date of the DPC held i.e. 08.09.2011. Following the recommendation of the DPC, the Director(PR) Government of Arunachal Pradesh issued two different orders on the same date, regularising promotion of the petitioner and promoting the private respondent, vide order No. PR-56/91/380, dated 08.09.2011 and PR-56/91/381, dated 08.09.2011, respectively. In the year 2015, Government of Arunachal Pradesh Department of Panchayati Raj vide order No. PR-112/2002/138, dated 17.07.2015 notified the final seniority list of Ministerial staff of the Department as on 08.06.2015. In that notification the petitioner was placed at serial No. 1 and the private respondent was placed at serial No. 3. Being aggrieved the private respondent filed a writ petition being WP(C)No.301(AP)2017 challenging the seniority list. On 16.06.2017 this Court disposed of the writ petition without

going into the merit of the case but by directing the respondents to consider and dispose of the representation of the private respondent (writ petitioner) within a period of 1 (one) month from the date of receipt of the copy of the order passed.

(iii). In pursuance of the direction given, the Secretary (PR) Government of Arunachal Pradesh issued a modified final seniority list of ministerial staff of Panchayati Raj Department as on 08.06.2015. In that the private respondent No. 5 was placed at serial No. 1 and the petitioner was placed at serial No. 2 in the seniority list of the Assistant. Being aggrieved by the modified final seniority list the petitioner has come before this Court challenging the same, mainly on the ground that the period of her officiating appointment ought to have been counted towards her seniority and had it been so she would have been senior to the private respondent.

4. Before the petitioner came to this Court, she had submitted two representations dated 27.03.2015 and 25.10.2017 to the Secretary (PR) Government of Arunachal Pradesh requesting for giving retrospective effect to her appointment in the post of Assistant from the date of her officiating appointment and modification of the impugned order.

5. Mr. Lamphu, learned counsel for the petitioner submitted that since the petitioner was appointed to the post of Assistant on officiating basis to meet the exigency of the service, she should be given the benefit of the period of her dedicated and uninterrupted officiating service while counting her seniority. The learned counsel cited the judgment of the Hon'ble Supreme Court passed in the case of ***G. P. Doval and Ors. Vs. The Chief Secretary, Government of U.P. and Ors.*** reported in ***AIR 1984 SC 1527***. The contents of the relevant paragraphs cited are reproduced herein below:

"15. Now if there was no binding rule of seniority it is well-settled that length of continuous officiation prescribes a valid principle of seniority. The question is: from what date the service is to be reckoned? It was urged that any appointment of a stop-gap nature or pending the selection by Public Service Commission cannot be taken into account for reckoning seniority. In other

words, it was urged that to be in the cadre and to enjoy place in the seniority list, the service rendered in a substantive capacity can alone be taken into consideration. We find it difficult to accept this bald and wide submission. Each case will depend upon its facts and circumstances. If a stop-gap appointment is made and the appointee appears before the Public Service Commission when the latter proceeds to select the candidates and is selected, we see no justification for ignoring his past service. At any rate, there is no justification for two persons selected in the same manner being differently treated. That becomes crystal clear from the place assigned in the seniority list to petitioner No. 1 in relation to respondent No. 7. In fact if once a person appointed in a stop-gap arrangement is confirmed in his post by proper selection, his past service has to be given credit and he has to be assigned seniority accordingly unless a rule to the contrary is made. That has not been done in the case of all the petitioners. The error is apparent in the case of petitioner 1 and respondent No. 7. These errors can be multiplied but we consider it unnecessary to do so. In fact a fair rule of seniority should ordinarily take into account the past service in the stop-gap arrangement is followed by confirmation. This view which we are taking is borne out by the decision of this Court in *Baleshwar Dass v. State of U.P.* (1981) 1 SCR 499:(AIR 1981 SC 41), wherein this Court observed that the principle which has received the sanction of this Court's pronouncement is that 'officiating service in a post for all practical purposes of seniority is as good as service on a regular basis. It may be permissible, within limits for government to ignore officiating service and count only regular service when claims of seniority come before it, provided the rules in that regard are clear and categorical and do not admit of any ambiguity and cruelly arbitrary cut-off of long years of service does not take place or there is functionally and qualitatively, substantial difference in the service rendered in the two types of posts.' It was said that service rules will have to be reasonable, fair and not grossly unjust if they are to survive the test of Articles 14 and 16. It is thus well-settled that where officiating appointment is followed by confirmation unless a contrary rule is shown, the service rendered as officiating appointment cannot be ignored for reckoning length of continuous officiation for determining the place in the seniority list. Admittedly, that has not been done and the seniority list is drawn up from the date on which the approval/selection was made by the Public Service Commission in respect of each member of the service, which is clearly violative of Art. 16, and any seniority list drawn up on this invalid basis must be quashed.

17. In view of the discussion, these petitions succeed and are allowed and a writ in the nature of certiorari is issued quashing the impugned seniority list dated March 22, 1971 in respect of Khandsari Inspectors. The respondents 1 to 3 are directed to draw-up a fresh seniority list based on the principle of length of continuous officiation reckoned from the date of first appointment if the appointment is followed by confirmation i.e. selection/approval by the State Public Service Commission. We order accordingly, but in the circumstances of the case, there will be no order as to costs."

6. Mr. Lamphu, learned counsel for the petitioner further submitted that where there is no Rule providing that period of officiating or contractual appointment should not be counted while reckoning seniority of such Government servants who were earlier appointed on such basis and regularised later, then, the seniority of such employees should be counted from the date of their initial appointment. In support of his submission the learned counsel referred to the decision of the Hon'ble Supreme Court in the case of ***Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra and Ors.*** reported in ***1990 SCC (2) 715***. The contents of the relevant paragraphs cited are also reproduced herein below:

" 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 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."

7. Mr. Tapin, learned Sr. Govt. Advocate appearing for the State respondents submitted at the very outset that the petitioner, from the very beginning of her career as Government Servant, was junior to the private respondent, therefore, her claim has no merit as per law. The learned Sr. Govt. Advocate also submitted that the petitioner has also come before this Court after a lapse of 3(three) years from the date of issuance of the seniority list, therefore, there is no merit in the petition for consideration. Thirdly the learned Sr. Govt. Advocate submitted that in the order promoting the petitioner as Assistant on officiating basis, it was clearly mentioned that the officiating promotion shall not confer any right for regularisation to the post and that it shall also not be counted for the purpose of seniority in the grade of Assistant, therefore, the petitioner cannot claim the benefit of the period of her officiating appointment in the reckoning of her seniority *vis-a-vis* the private respondent. The learned Sr. Govt. Advocate further submitted that as per the

Recruitment Rules of the Assistant published on 14.05.1997, any UDC of Panchayati Raj Department is eligible for promotion to the post of Assistant only after having served 5(five) years in the case of general candidates and 3(three) years in the case of candidates belonging to reserved categories. However, at the time the petitioner was appointed on officiating basis she had not completed the required 3(three) years period of service in the post of UDC, therefore, her promotion on officiating basis though done to meet the exigency of service, was not as per the Recruitment Rules, as such, she is not entitled to the benefit of the period of her officiating appointment towards her seniority. The learned Sr. Govt. Advocate, thereafter, pointed out that the petitioner was appointed as UDC on officiating basis w.e.f. 08.08.2002 and regularised on 07.01.2005, whereas, the private respondent was appointed as UDC as officiating basis on 29.03.2001 and regularised on 29.03.2001, therefore, the private respondent was senior to the petitioner in the feeder cadre of Assistant as such, there is nothing illegal or wrong in having placed her below the private respondent in the seniority list under challenge. Lastly, the learned Sr. Govt. Advocate submitted that when the petitioner was promoted for officiating basis there was no clear vacancy as the person who was the incumbent of that post, was promoted to the post of Superintendent on officiating basis. Therefore, it cannot be said that the petitioner was appointed against a clear vacancy, as such, she could not have been given the benefit of the period of that time till the person who occupied that post was promoted on regular basis to the higher post.

8. Mr. R. Sonar, learned Sr. Counsel appearing for the private respondent concurred with the submission of the learned Sr. Govt. Advocate and submitted that the proposition of law as submitted by the learned counsel of the petitioner will not apply in this case. Elaborating his submission the learned counsel submitted that the DPC proceeding was the root cause of the issuance of the impugned order, but since the petitioner has not challenged it, it will be futile to challenge the consequential order(seniority list). The learned counsel also submitted that since the DPC proceeding was of 2011 and has been acted upon and not challenged it has attained its finality and therefore, on that ground alone the writ petition can be dismissed. Mr. Sonar, further submitted that clause (B) of paragraph-47 of the judgement passed in the case of ***Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra and Ors.*** reported in ***1990 (2) SCC 715*** will not apply

but sub paragraph –(A) of the same paragraph will apply. In support of his submission the learned counsel referred to the judgement of the Hon'ble Supreme Court passed in the case of ***State of West Bengal and Ors. Vs. Aghore Nath Dey and Ors.*** reported in ***1993 SSC (3) 371***. The contents of the relevant paragraphs are reproduced herein below:

"18. The admitted facts, which are the foundation of the claim of the writ petitioners, are sufficient to negative their claim. It is obvious that prior to the steps taken by the State Government on 26.2.1980 for their regularisation in this manner, there was no basis on which the writ petitioners could claim to be regularly appointed as Assistant Engineers; and, therefore, the manner in which they were regularised, including the mode of fixation of their seniority with effect from 26.2.1980, is decisive of the nature of their regular appointment. This alone is sufficient to negative their further claim. They can make no grievance to any part of that exercise, made only for their benefit.

19. The constitution bench in Maharashtra Engineers' case, while dealing with Narender Chadha, emphasised the unusual fact that the promotees in question had worked continuously for long periods of nearly fifteen to twenty years on the posts without being reverted, and then proceeded to state the principle thus :

"We, therefore, confirm the principle of counting towards seniority the period of continuous officiation following an appointment made in accordance with the rules prescribed for regular substantive appointments in the service.'

20. The constitution bench having dealt with Narendra Chadha in this manner, to indicate the above principle, that decision can not be construed to apply to cases where the initial appointment was not according to rules.

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

22. 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.

23. 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.

24. 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).

25. 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 reconcile 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).

26. In view of the above, it is clear that the claim of the writ petitioners (respondents in all these appeals) for treating their entire period of 'service prior to 26.2.1980 as regular service for the purpose of seniority, and fixation of their seniority accordingly, is untenable. The submission of Shri Sanghi that their initial ad hoc appointment must be treated as having been made in accordance with the rules since the selection by an alternative mode, namely, by a committee of five Chief Engineers was resorted to on account of the emergency, cannot be accepted. Rule 11 of the 1959 Rules provides for appointments to be made during emergency, and lays down that such appointments during emergency can be made only 'by advertisement and interview, through the Public Service Commission, West Bengal.'

Admittedly, this express requirement in Rule 11 was not followed or fulfilled subsequently, and, therefore, the initial ad hoc appointments cannot be treated to have been made according to the applicable rules. These ad hoc appointments were clearly not in accordance with the rules, and were made only as a stop-gap arrangement for fixed period, as expressly stated in the appointment order itself.

9. Mr. Sonar, learned counsel for the private respondent further submitted that as per the Recruitment Rules of Assistant in the Department of Panchayati Raj promotion to the post of Assistant has to be through DPC, therefore, the officiating appointment of the petitioner which was not done through DPC was against the Rules itself, as such, the benefit of seniority on that basis cannot be granted to the petitioner. Lastly, Mr. Sonar, learned counsel submitted that the final Seniority was fixed as per the Office Memorandum No. 220 11/7/86-Estt.(D), dated 03.07.1986 and 11.11.2010 issued by the Government of India, Department of Personnel and Training, which is also followed in the State of Arunachal Pradesh. Therefore, nothing wrong was committed while fixing the seniority. Relevant Paragraph – II of the said memorandum cited by the learned counsel which reads as follows:

"2.2. SENIORITY OF PROMOTEEES

Where promotions are made on the basis of recommendations of a DPC, either by 'selection' or 'non-selection' method as per due procedure, the seniority of an officer assessed as 'fit', in the promoted grade shall be same as in the feeder grade from which they are promoted. Where, however, a person is considered as unfit for promotion and is superseded by a junior, such persons shall not, if he/she is subsequently found suitable and promoted, take seniority in the higher grade over the junior persons

who had superseded him/her. Persons appointed as a result of an earlier selection shall be senior to those appointed as a result of subsequent selection. The relative seniority of promotees which earlier used to be determined according to the date of confirmation in the promotion grade and not the original order of merit, (in case where confirmation was in an order different from the order of merit indicated at the time of their appointment), has been discontinued w.e.f. 4.11.1992."

10. I have considered the submissions of the learned counsels representing the parties, perused the judgments cited by them and the Recruitment Rule of the post of Assistant in the Department of Panchayati Raj.

11. There is no dispute on the fact that all along the petitioner was junior to the private respondent in service including in the feeder cadre i.e. UDC. The peculiar facts and circumstances in this case are that the petitioner, though she was junior to the private respondent was first appointed as Assistant on officiating basis on 10.10.2006, vide order No. PR-129/2005 issued by the Director of Panchayati Raj w.e.f. 10.10.2006 as stop gap arrangement to meet exigency of the service and her service along with that of the private respondent was regularised on the recommendation of the DPC held on 08.09.2011 and the order No. PR-56/91/380 issued on the same date, by the Director of Panchayati Raj, Government of Arunachal Pradesh. Since she had served in the post of Assistant for a period of almost 5(five) years uninterruptedly till she was regularised vide order No. PR-56/91/380, she has claimed that that period of her officiating service should be counted towards her seniority. In the event her service is counted from that date of her appointment on officiating basis, she would be senior to the private respondent who was appointed to the post of Assistant on the recommendation of the same DPC held on 08.09.2011. Therefore, the issue is whether the period of officiating appointment of the petitioner can be counted towards her seniority.

12. The Law in that kind of circumstance has been settled by the Hon'ble Supreme Court in the case cited by the learned counsel of the petitioner,

though the learned counsel has sought to give different meaning. At paragraph-(A) of the judgment passed in the case of ***Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra and Ors.***, contents of which has been already reproduced at paragraph-6 of this judgment, it has been sufficiently made clear that where the initial appointment is only ad-hoc and not according to Rules and made as stop gap arrangement, the officiation in such post cannot be taken into account for considering the seniority. The contents of the sub-par (B) will not apply or include the case of the petitioner because what has been excluded in sub-para(A) cannot be included in sub-para (B). The difference between the two has been clearly explained by the Hon'ble Supreme Court in the case of the ***State of West Bengal and Ors. Vs. Aghore Nath Dey and Ors.*** The contents of the relevant paragraphs of the judgment where the Hon'ble Supreme Court has explained and clarified what was stated in sub-para (A) and in sub-para-(B) of paragraph 47 of the judgment passed in the case of ***Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra and Ors.*** has been reproduced at paragraph-7 of this judgment, therefore, there is no need for this Court to go into it again.

Further, in the case of ***Massod Akhtar Khan and Ors. Vs. State of Madhya Pradesh and Ors.*** reported in ***1990 (4) SCC 24***, the Hon'ble Supreme Court while dealing with a similar case had rejected the plea of the petitioners in that case to count their past service which was on temporary basis and not as per Rules but followed by regularisation as per Rules. That judgment was delivered on 16th July, 1990 whereas, the judgment in the ***Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra and Ors.*** was delivered on 2nd May, 1990. For the sake of more clarity, it may be stated here that in the case stated above i.e. ***Massod Akhtar Khan and Ors. Vs. State of Madhya Pradesh and Ors.*** it was made clear that appointment made on stop gap arrangement and not as per Rules followed by regularisation as per Rules would not be counted for seniority.

13. Now coming back to the facts and circumstances of the case, the appointment order dated 10.10.2006 issued by the Director of Panchayati Raj, Government of Arunachal Pradesh states clearly that the initial appointment of the petitioner to the post of Assistant was on officiating and temporary basis. As per the Recruitment Rules of Assistant in the Department of Panchayat, Government of Arunachal Pradesh notified vide notification No. PR-71/96, dated 14th May, 1997, appointment to the post of Assistant in the Department of Panchayati Raj is through promotion from amongst the persons who have been in the post of UDC in Panchayati Raj Department for 5 (five) years continuous regular service (for persons belonging to general category) and 3(three) years regular service in the case of candidates belonging to Arunachal Pradesh, Scheduled Tribe failing which by transfer/deputation from the UDCs of other Departments of the Government who have completed 5(five) years regular service. And the mode of recruitment as given in the Recruitment Rule is through the DPC composition of which would be (i). Director, Panchayat as Chairman, (ii). Deputy Secretary, P&D as Member (iii). One Group-A Officer from another Department as Member and (iv). One Group-A Officer belonging to ST in case none of the officer belongs to ST as Member. The Officiating appointment order of the petitioner does not show that her appointment to the post of Assistant on officiating/temporary basis was through DPC. Further, admittedly the petitioner had not completed 3(three) years of service as UDC at the time she was appointed to the post of Assistant on officiating/temporary basis. All these shows that the petitioner's appointment was only a stop gap arrangement on officiating basis and not as per the Rules. Further, the Officiating appointment order shows that appointment of the petitioner was to the temporary vacancy which occurred due to the temporary promotion of one Shri T. Tapak to the post of Superintendent. This shows that the appointment of the petitioner was not to a clear vacancy. From the above facts and circumstances, it is crystal clear that the petitioner's appointment to the post of Assistant on officiating basis did not meet the requirement of law

as settled by the Apex Court in the cases state above, therefore, she would not be entitled to count the benefit of it while reckoning or determining her seniority.

Furthermore, the officiating appointment of the petitioner was under certain conditions as already stated at paragraph-3(i) of the judgment, one of which was that her appointment shall not count for the purpose of seniority in the grade of Assistant. The petitioner accepted this condition and joined the post and served till she was regularised, therefore, she cannot now claim that the period of her officiating appointment should be counted towards her seniority.

14. In addition to what has been stated above, I agree with the submission of Mr. Sonar, learned counsel appearing for the private respondent that the main cause of the grievance of the petitioner is the proceedings of the DPC which decided and recommended that the promotion of the petitioner and the private respondent should be w.e.f. 08.09.2011 and since this has not been challenged the challenge on the consequential order would make the writ petition inconsequential.

15. Taking into account all that has been stated above, I don't find merit in the case of the petitioner, therefore, it is **dismissed**.

JUDGE

Victoria