

no relevance to the point in issue. In these judgments, the point considered was totally different and not relateable to the point in issue. It has been held by various Courts including the Supreme Court of India that legislature can pass a law and make its provisions retrospective. Such retrospectivity can be challenged by a party where the retrospective operation completely alters the character of the tax imposed or as to make it outside the limits of the entry which gives the Legislature competence to enact the law or that the alternation made is so unreasonable making it arbitrary. In the present case while granting exemption from payment of tax a condition is imposed that the unit must function during the period of exemption granted to the unit otherwise its liability to refund the amount of tax for which exemption was granted. The restriction imposed is neither arbitrary nor retrospective.

(7) Counsel for the petitioner then contended that his appeal be ordered to be heard on merits as the respondent-authorities have already recovered nearly 60 per cent of the tax due i.e. Rs. 5,11,000 by auction and a sale of the property and Rs. 1,00,000 deposited through a bank draft. We find force in this submission. Petitioner-company has suffered a loss of nearly Rs. Two crores and keeping in view this aspect and that nearly 60 per cent of the tax has already been recovered, we direct the First Appellate Authority i.e. Joint Excise and Taxation Commissioner (Appeals), Rohtak to hear the appeal on merits and dispose of the same after affording due opportunity of hearing to the petitioner. The condition of deposit of the remaining tax as a precondition for hearing the appeal is dispensed with. Parties are directed to appear before the Appellate Authority on August 3, 1994.

R.N.R.

Before Hon'ble R. P. Sethi, J. L. Gupta & N. K. Kapoor, JJ,  
CHAMBEL SINGH,—Petitioner.

*versus*

THE STATE OF HARYANA AND ANOTHER.—Respondents.  
Civil Writ Petition No. 5592 of 1989.

September 23, 1994.

Constitution of India, 1950—Art. 226—Ad hoc service—Whether to be counted towards seniority in the cadre.

Held, that from a reading of para 44, Clauses (A) & (B) in the Director Recruit Class-II Engineering Officer's Association and

*others Case*, coupled with elucidation of these clauses in *Aghore Nath Dey's case* and also the views expressed in the earlier judgments of the Apex Court, it can be said —

- (i) That the period as an *ad hoc* appointee cannot be taken into account for considering the seniority of an incumbent.
- (ii) It is only when such an appointment is as per rules and not by way of a stop gap arrangement and only a procedural formality is required to be complied with that the services so rendered will be taken into account towards his seniority in the cadre ;
- (iii) In the absence of Rules, it would have to be kept in view as to whether the appointment so made is against an existing vacancy and not for a limited period and in that case the period so spent by an incumbent can be considered to determine his seniority in the cadre ;
- (iv) If the appointment is otherwise regular except for the deficiency of certain procedural defects, such defect/defects stand cured with the subsequent regularisation ;
- (v) mere long stay at the post on account of some inaction on the part of a delinquent officer or on account of interim direction of the Court will not clothe an appointee with any right to tag such a period to determine his seniority in the cadre. Period of service as a stop gap arrangement shall be ignored while determining his seniority in the cadre. The above points are only illustrative and not exhaustive in the content. Any point which is not specifically covered therein is to be examined in the light of clauses (A) and (B) of *Direct Recruit Class-II Engineering Officers' Association and other case* as explained in *Aghore Nath Dey's case*.

(Para 18)

*Further held*, that merely because there has been no break in service cannot be construed as a factor entitling such an incumbent to tag the period spent by him as an *ad hoc* employee.

(Para 19)

*Des Raj v. State of Haryana and others* (C.W.P. 8603 of 1991) and C.W.P. 4468 of 1986.

(over-ruled)

*Sohan Lal v. State of Haryana*, 1992 (4), S.L.R. 190.

(Approved)

Gurnam Singh, Advocate, for the Petitioner.

H. L. Sibal, A.G. Haryana with Ms. Rita Kohli, Advocate.

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G. K. Chatrath, A.G. Punjab with Ms. Anu Chathrath, Advocate,  
for the Respondents.

JUDGMENT

N. K. Kapoor, J.

(1) Whether service rendered by a person on *ad hoc* basis is to be counted for the purpose of determining his seniority in the cadre is the question referred to the Full Bench in view of the conflict in the judgments in cases *Sohan Lal v. State of Haryana* (1), and *Des Raj, v. The State of Haryana and others*, C.W.P. No. 8063 of 1991.

(2) To examine the question referred to, it would be appropriate to keep in mind the salient facts of one of the writ petitions. Since Division Bench in Civil Writ Petition No. 5592 of 1989 has referred this law point for consideration by a larger Bench, salient facts of this writ petition are given in a summarised manner.

(3) Chambel Singh joined as Sub-Inspector in Food and Supplies Development, Haryana, on *ad hoc* basis on 9th November, 1967 and continued to serve the department till his services were terminated on 14th October, 1971. The order of termination was challenged by the petitioner and others by filing writ petition bearing No. 4137 of 1971 in which the motion Bench by way of interim relief stayed the operation of the impugned order of termination. Subsequently, petitioner and the like of him were given appointment as Sub-Inspector on temporary basis with a specific stipulation that their services are liable to be terminated as soon as persons recommended by the Service Selection Board join and otherwise too without any notice and without assigning any reason. Later on, Service Selection Board recommended the name of the petitioner to be appointed as Sub Inspector, Food and Supplies Development, Haryana, pursuance to which Director, Food and Supplies Department Joint Secretary to the Government of Haryana issued appointment letter on June 6, 1972. Petitioner felt aggrieved by the action of the respondents as services rendered by him on *ad hoc* basis i.e. for the period from 8th December, 1967 to 10th June, 1972 was not being counted for the purpose of seniority, increment, promotion and other consequential benefits and so chose to assail the same by filing the present writ petition. According to the petitioner, he had served the department without any break since his joining the department on 9th November, 1967. The order of termination dated 14th October

1971 having been stayed by the Motion Bench, there has been thus no break in service and so petitioner is entitled to tag this period to determine his seniority in the cadre. Reliance was placed upon the decision of this Court in CWP No. 4468 of 1986 (*Des Raj v. State of Haryana and others*), decided on February 11, 1988. The motion Bench,—*vide* order dated 2nd May, 1989 did not concur with the opinion expressed by J. V. Gupta, J. (as he then was) and so admitted the petition to the Division Bench.

(4) Mr. Gurnam Singh, learned counsel for the petitioner, is for the proposition that *ad hoc* service rendered by an employee is to be taken into consideration while determining his seniority, especially when there has been no break in service and the initial appointment is also not contrary to the rules. Support has been sought from the judgment of J. V. Gupta, J. (as he then was) delivered in case '*Des Raj v. State of Haryana and others*' (CWP No. 4468 of 1986) and the Division Bench judgment of J. S. Sekhon and S. S. Rathor, JJ., in Civil Writ Petition No. 8063 of 1991. In fact, the latter Division Bench judgment is an off-shoot from the decision of J. V. Gupta, J., in CWP No. 4468 of 1986. In addition thereto, reference was made to Rule 11 of the Haryana Food and Supplies Department Sub Offices (Group C) Service Rules, 1982 (for short "the Rules") which envisages determination of seniority *inter se* members of the services by their length of continuous service on any post in the service. Elaborating, the counsel urged that the petitioner's appointment as Sub-Inspector, though *ad hoc*, was not contrary to the Rules. Petitioner served the department for almost for a period of 4½ years without any blemish. The order of termination passed on 14th October, 1971 was stayed by the Motion Bench and it is during the pendency of the writ petition that firstly the petitioner was allowed to work and thereafter was offered temporary appointment on the recommendations of the Service Selection Board,—*vide* appointment letter dated 6th June, 1972. Thus, for all purposes there has been no break in the service of the Petitioner who otherwise too has been promoted subsequently to the rank of Inspector as well. According to the counsel, the view taken by J. V. Gupta, J. (as he then was) and the subsequent decision by the Division Bench in Civil Writ Petition No. 8063 of 1991 is per rules governing service and otherwise too just and proper and also in conformity with the proposition (A) and (B) as formulated by the apex Court in case reported as *Direct Recruit Class II Engineering Officers Association v. State of Maharashtra* (2), and thus urged that the point referred to be answered in affirmative.

(5) Mr. Randeep Surjewala, learned counsel for the petitioner in C.W.P. No. 2397 of 1994 broadly put the following propositions for consideration :—

(6) (1) That in absence of any statutory rules governing the service, normal rule is that seniority would be governed by the period of continuous officiating/*ad hoc* service following by confirmation. Thus, total period of *ad hoc* service would have to be taken into account subject to the exception that person was qualified to hold the post at the time of initial *ad hoc* appointment.

(7) (2) That once an incumbent is appointed to a post in accordance with the applicable service rules, seniority has to be counted from the date of first appointment as such and not from the date of confirmation. Thus, *ad hoc* service, in aforesaid situation, would be taken into consideration.

(8) (3) The period of officiation, if continuous for a reasonable amount of time, would itself give a colour of permanency.

(9) In support of the above propositions, reference was made to the decision in *Direct Recruit Class II Engineering Officers' Association's case* (*supra*) which has further been explained in case reported as *State of West Bengal and others v. Aghore Nath Dey and others* (2).

(10) Counsel for other petitioners have adopted the arguments advanced by Sarv Shri Gurnam Singh and Randeep Surjewala.

(11) Learned Advocate General, Haryana Mr. H. L. Sibal, at the outset highlighted the factual aspects, namely, the appointment of the petitioner on *ad hoc* basis, his valid termination and the factum of his fresh appointment as per selection made by the Service Selection Board on 6th June, 1972. According to Mr. Sibal, *ad hoc* appointment in its very nature is intended to meet and cover a particular situation and is invariably for a fixed period. In view of the urgency, such powers are exercised by the immediate superior to meet a particular situation. Such an appointment is not according to rules and does not confer any right upon a person for regularisation or his absorption in the cadre. Refuting the assertions made by the counsel for the petitioner that the appointment of the petitioner is according to rule, learned counsel referred to the Rules 1982

and urged that the Rules do not envisage any *ad hoc* appointment. One has to be in service and it is thereafter that the length of his continuous service is to be taken into consideration for determining his seniority in the cadre. According to the counsel, Rule 11 of the Rules belies the claim set up by the petitioner. According to Mr. Sibal, unless an incumbent is appointed to a post, period spent by him as *ad hoc* employee cannot be counted to determine his seniority i.e. to say in case initial appointment is not according to Rules, such a period cannot be tagged to determine his seniority. Reliance has been placed upon the decision of the apex Court in cases reported as *The Direct Recruit Class-II Engineering Officers' Association and others v. State of Maharashtra and others* (3), *Union of India and another v. Prof. S. K. Sharma* (4), (para 5, 6 and 8); *State of West Bengal and others v. Aghore Nath Dey and others* (5), *S. K. Saha v. Prem Parkash Aggarwal and others* (6), (para 7 & 8); and *Excise Commissioner, Karnataka and another v. V. Sreekanta* (7). Adverting to the conflicting decision taken by the two Division Benches, the counsel urged that the decision taken in *Sohan Lal's case* (supra) is, in fact, in consonance with Rule 11 of the Rules and otherwise too in line with the various judgments of the apex Court reference to which has been made in the judgment, notably the decision in *Union of India v. S. K. Sharma* (8), and *Masood Akhtar Khan and Others v. State of Madhya Pradesh and Others* (9):

(12) Mr. G. K. Chatrath, learned Advocate General, Punjab, besides adopting the argument addressed by the Advocate General, Haryana, drew the attention of the Court to the decision of the apex Court in case reported as *Niti Rai Singh and others v. Union Territory Chandigarh and another* (10).

(13) In *Des Raj's case* (supra), J. V. Gupta J. (as he then was) proceeded on the premises that since there were no rules and regulations or instructions to the effect that the period of service as *ad hoc* will not be taken into consideration for promotion and seniority etc.

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(3) A.I.R. 1990 S.C. 1607.

(4) A.I.R. 1992 S.C. 1188.

(5) 1993 (2) S.C. 598.

(6) J.T. 1993 (6) S.C. 441.

(7) A.I.R. 1993 S.C. 1564.

(8) 1992 (2) S.L.R. 373.

(9) 1990 (5) S.L.R. 639.

(10) 1992 (2) S.L.R. 1.

the same is thus to be taken into consideration to determine the promotion and seniority. Petitioner's claim to tag his *ad hoc* service for the purpose of determining his seniority in the cadre is primarily based upon the judgment in *Des Raj's* case (supra), wherein a direction was given to the authorities to consider his case by giving him the benefit of the past service on *ad hoc* basis towards his promotion and increment etc. This decision led to the filing of second writ petition by Des Raj (C.W.P. No. 8063 of 1991) in which a direction has been given to the respondents to fix his seniority in terms of the order passed in C.W.P. No. 4468 of 1986 decided on February 11, 1988. Presumably, the order passed by the motion Bench on 2nd May, 1989 in Chambel Singh's case wherein the judgment in C.W.P. No. 4490 of 1986 had been doubted was not brought to the notice of the Bench in *Des Raj* case. A mere perusal of judgment of Division Bench in *Des Raj's* case reveals that it merely chose to follow the earlier Single Bench judgment and so ordered for its compliance. There is neither a reference to any of the decision of the Supreme Court or to the rules governing the service. On the other hand, Division Bench in *Sohan Lal's* case (supra) has in detail examined the statutory rules regulating the fixation of seniority, namely, the Haryana Food and Supplies Department Sub-Offices (Group C) Service Rules, 1982, and in particular the expression 'members of the service' as per Rule 11 of the Rules. On carefully examining the contentions raised in the light of the statutory provisions, Division Bench came to the conclusion that the petitioner's claim i.e. *ad hoc* service must be added for the purpose of fixation of seniority is clearly untenable. It further held that in the instant case there are rules which govern the fixation of seniority of the petitioner. It further held that any general observations in one or the other judgment hardly advance the case of the petitioner. Support for this view was sought from the decision of the apex Court in *S. K. Sharma's* case (supra) wherein earlier decision of the apex Court in *Masood Akhtar Khan's* case (supra) too was relied upon. Thus, relying upon the latest judicial pronouncement of the apex Court in *Masood Akhtar Khan's* case (supra), it was held that the petitioner is not entitled to tag the *ad hoc* service rendered by him for purpose of determining his seniority in the cadre. It is worth mentioning that Sohan Lal petitioner too belongs to the same department as the petitioner in C.W.P. No. 5592 of 1989. This view of the Division Bench in case reported as *Darshan Singh v. State of Punjab and another* (11), commends itself to us. The apex Court

too had the occasion to examine such like matter in a number of cases. Reference to all would be merely burdening the judgment. All the same, it would be appropriate to keep in mind the view expressed by the apex Court in the following judgments while deciding the points canvassed.

(14) The apex Court in case reported as *S. B. Patwardhan and another v. State of Maharashtra and others* (12), examined the question of seniority in service between the promotees on the one hand and the direct recruits on the other hand to the post of Deputy Engineers. The promotees made grievance to the effect that despite their continuous length of service as Deputy Engineers in the cadre, direct recruits were shown to be senior to them. On facts, the Court came to the conclusion that promotees as well as direct recruits belong to the same cadre and in these circumstances held that direct recruits and the promotees though drawn from two different sources constitute a single integrated cadre. They discharge identical functions, bear similar responsibilities and acquire an amount of experience in their respective assignments. Thus there was no tangible ground to differentiate between the two as was sought to be contended on the basis of Rule 8(iii) of Bombay Service of Engineers (Class I and Class II) Recruitment Rules, 1960, and the same was struck down being violative of Articles 14 and 16 of the Constitution. In the *Direct Recruit Class-II Engineering Officers' Association and other's case* (supra), the matter is how the seniority is to be counted; whether the same is to be counted from the date of appointment or from the date of confirmation; and whether officiating service is to be counted; and all such co-related points were considered in all its detail. The apex Court summed up the conclusion in para 44 of the judgment which reads as under :—

“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 officiating in such post cannot be taken into account for considering the seniority.



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- (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.
- (C) When appointments are made from more than one source, it is permissible to fix the ratio for recruitment from the different sources, and if rules are framed in this regard they must ordinarily be followed strictly.
- (D) If it becomes impossible to *adhere* to the existing quota rule, it should be substituted by an appropriate rule to meet the needs of the situation. In case, however, the quota rule is not followed continuously for a number of years because it was impossible to do so the inference is irresistible that the quota rule had broken down.
- (E) Where the quota rule has broken down and the appointments are made from one source in excess of the quota, but are made after following the procedure prescribed by the rules for the appointment, the appointees should not be pushed down below the appointees from the other source inducted in the service at a later date.
- (F) Where the rules permit the authorities to relax the provisions relating to quota, ordinarily a presumption should be raised that there was such relaxation when there is a deviation from the quota rule.
- (G) The quota for recruitment from the different sources may be prescribed by executive instructions, if the rules are silent on the subject.
- (H) If the quota rule is prescribed by an executive instruction, and is not followed continuously for a number of years, the inference is that the executive instruction has ceased to remain operative.
- (I) The post held by the permanent Deputy Engineers as well as officiating Deputy Engineers under the State

of Maharashtra belonged to the single cadre of Deputy Engineers.

- (J) The decision dealing with important questions concerning a particular service given after careful consideration should be respected rather than scrutinised for finding out any possible error. It is not in the interest of Service to unsettle a settled position.

With respect to writ Petition No. 1327 of 1982, we further held :

- (K) That a dispute raised by an application under Article 32 of the Constitution must be held to be barred by principles of *res judicata* including the rule of constructive *res judicata* if the same has been earlier decided by a competent Court by a judgment which became final.”

(15) In Professor S. K. Sharma's case (*supra*), Mr. Sharma was initially appointed as Assistant Professor on 24th September, 1958. He was promoted as Associate Professor on 23rd October, 1963 and thereafter promoted as Professor (Junior Scale) on temporary and *ad hoc* basis for a period of six months. He was thereafter appointed as Professor (Junior Scale) on regular basis through U.P.S.C.,—*vide* order dated 28th June, 1969 on probation for a period of two years. However, since the said post was not available as one Shri S. S. Sharma was holding the post : he was adjusted on *ad hoc* basis against the vacant post of Professor (P. G. Course). This appointment on *ad hoc* basis continued from 28th June, 1969 to 14th February, 1971 and thereafter from 15th February, 1971 to 29th September, 1973 against the post of Professor (Senior Scale). Professor Sharma was selected on regular basis as Professor (Senior Scale) with effect from 29th September, 1973. He was not paid his pay and allowances for the period for which he worked against the post of Professor (P. G. Course). Professor approached the Tribunal in these circumstances and was granted arrears of pay and allowances for 28th June, 1969 to 29th September, 1973. Subsequently, Mr. Sharma submitted another application before the Tribunal claiming his seniority on the post of Professor (Senior Scale) with effect from his *ad hoc* appointment dated 28th June, 1969 which continued till his regular selection for the said post on 29th September, 1973. The Tribunal granted the relief claimed. This order was challenged in appeal. The apex Court held as under :—

“In our view the Tribunal was totally wrong in granting seniority to the respondent for the period of *ad hoc* appointment on the post of Professor (Senior Scale), in the facts and circumstances of the present case and wrongly applied the ratio of Narendra Chandha’s case (A.I.R. 1986 S.C. 638) (*supra*). The respondent was regularly selected as Professor (Junior Scale) and in view of the fact that the aforesaid post in the Civil Engineering Department was not vacant, he was adjusted against the post of Professor (P. G. Course) and subsequently against the post of Professor (Senior Scale) on *ad hoc* basis in his own grade. It is no doubt correct that the Tribunal in the earlier application No. T-159 of 1986 by order dated 12th June, 1986 had allowed arrears of pay and allowances for the period 28th June, 1969 to 29th September, 1973 for the post of Professor (Senior Scale) but that was allowed by the Tribunal on the ground that the respondent had actually worked against the post of Professor (Senior Scale) though on *ad hoc* basis. Such order of the Tribunal granting pay and allowances cannot confer any right on the respondent to claim seniority also on the post of Professor (Senior Scale). The approval of U.P.S.C. for the continuation of the respondent on the post of Professor (Senior Scale) on *ad hoc* basis was merely for the purpose of granting pay and allowances and it cannot be considered as a regular appointment of the respondent on the post of Professor (Senior Scale). It may be further noted that the respondent was selected for the post of Professor (Junior Scale) on regular basis on 28th June, 1969 and according to existent rules three years service on regular basis on the post of Professor (Junior Scale) was necessary for promotion to the post of Professor (Senior Scale). Thus the respondent was not even eligible for promotion to the post of Professor (Senior Scale) prior to June 28, 1972 till he completed three years of service on the post of Professor (Junior Scale). In view of this ground also the respondent was not entitled to claim any seniority on the post of Professor (Senior Scale) from 28th September, 1969 the date of his *ad hoc* appointment on such post.....”

(16) Reliance was placed upon the decision in *Masood Akhtar Khan’s case* (*supra*) and the decision in case reported as *D. N. Agarwal*

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v. *State of Madhya Pradesh* (13), as well as decision of the Constitution Bench in *Direct Recruit Class-II Engineering Officers' Association v. State of Maharashtra* (14).

(17) In *Aghore Nath Dey's case* (supra), the Court further dilated upon the conclusion given in tabulated form i.e. clauses (A) and (B) in the *Direct Recruit Class-II Engineering Officers' Association and others case* (supra) and chose to reconcile the two clauses in their respective operations. In the words of the Court, these are :—

“PARA 22. There can be no doubt that these two conclusions have to be read harmoniously, and conclusion (B) cannot 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.”

“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 the conclusion (A) to cover the cases where the initial appointment is made against an existing

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(13) A.I.R. 1990 S.C. 1311.

(14) A.I.R. 1990 S.C. 1607.

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 case can fall within the ambit of conclusion (B) even though they are squarely covered by the corollary in conclusion (A)".

(18) For the purpose of present enquiry, clauses (A) and (B) in the *Direct Recruit Class-II Engineering Officers' Association and others case* (supra) coupled with elucidation of these clauses in *Aghore Dey's case* (supra) and also the views expressed in the earlier judgments of the apex Court, it can be said: (i) that the period as an *ad hoc* appointee cannot be taken into account for considering the seniority of an incumbent; (ii) it is only when such an

appointment is as per rules and not by way of a stop gap arrangement and only a procedural formality is required to be complied with that the services so rendered will be taken into account towards his seniority in the cadre; (iii) In the absence of Rules, it would have to be kept in view as to whether the appointment so made is against an existing vacancy and not for a limited period and in that case the period so spent by an incumbent can be considered to determine his seniority in the cadre; (iv) If the appointment is otherwise regular except for the deficiency of certain procedural defects, such defect/defects stand cured with the subsequent regularisation; (v) mere long stay at the post on account of some inaction on the part of a delinquent officer or on account of interim direction of the Court will not clothe an appointee with any right to tag such a period to determine his seniority in the cadre. Period of service as a stop gap arrangement shall be ignored while determining his seniority in the cadre. The above points are only illustrative and not exhaustive in content. Any point which is not specifically covered therein is to be examined in the light of clauses (A) and (B) of *Direct Recruit Class-II Engineering Officers' Association and others case* (supra) as explained in *Aghore Nath Dey's case* (supra).

(19) In the light of what has been noticed above submission of Shri Gurnam Singh, counsel for the petitioner, are totally unacceptable. Merely because there has been no break in service cannot be construed as a factor entitling such an incumbent to tag the period spent by him as an *ad hoc* employee. Mr. Randeep Surjewala's proposition, in fact, has been duly answered in the above cited judgments in *Direct Recruit Class-II Engineering Officers' Association and others case* (supra) as well as in *Aghore Nath Dey's case* (supra) and need not be dilated upon any further. Division Bench in *Des Raj v. The State of Haryana and others* (C.W.P. No. 8603 of 1991) is in the nature of an executionary or of the direction given by J. V. Gupta, J., in the judgment in C.W.P. Bench in *Des Raj v. The State of Haryana and others* (C:j'B—xx No. 4468 of 1986 decided on February 11, 1988. Since J. V. Gupta, directed the authorities to consider the petitioner's earlier period of service as an *ad hoc* employee to count for his eligibility for promotion, Division Bench without examining the matter as to whether *ad hoc* service is to be counted to determine his seniority in the light of the judicial pronouncements or the rules governing the service, namely, the Haryana Food and Supplies Department Sub Offices (Group C) Service Rules, 1982, chose to follow the directions given by the Single Bench. Both these judgments appear to have proceeded on the wrong premises and have ignored the decision of the

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apex Court. Both these judgments do not lay down the correct law and consequently are overruled.

(20) Division Bench in *Sohan Lal's case* (supra) after examining Rule 11 of the Haryana Food and Supplies Department Sub Offices (Group C) Service Rules, 1982, and in the light of the decision of the apex Court in *Professor S. K. Sharma's case* (supra) and in *Masood Akhtar Khan's case* (supra) came to the conclusion that the service rendered on *ad hoc* basis is not to be counted for seniority. However, the Bench left the question open whether *ad hoc* service will count for leave, increment and pension. This view is in conformity with the decision of the apex Court noticed above and is thus approved.

(21) In view of what has been discussed above, we are of the view that *ad hoc* service *per se* cannot be counted to determine appointee's seniority in the cadre.

(22) Civil Writ Petition be now placed before the Division Bench for disposal in accordance with the answer rendered to the question posed.

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R.N.R.