



2026:AHC:207147-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

SPECIAL APPEAL No. - 872 of 2026

District Judge

.....Appellant(s)

Versus

Anand Kumar Verma and others

.....Respondent(s)

Counsel for Appellant(s)	: Rahul Srivastava, Ranjan Srivastava
Counsel for Respondent(s)	: Krishna Ji Khare, Manu Khare, Mrityunjay Khare

RESERVED
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Court No. - 2

HON'BLE J.J. MUNIR, J.
HON'BLE INDRAJEET SHUKLA, J.

(Delivered by Indrajeet Shukla,J.)

1. Heard Mr. Rahul Srivastava, learned Counsel for the appellant and Mr. Manu Khare, learned Counsel appearing on behalf of the petitioner-respondent no.1.

2. This instant intra-Court appeal, preferred under Chapter V, Rule VIII of the Allahabad High Court Rules, assails the judgment and order dated 02.03.2012 passed by the learned Single Judge in Civil Misc. Writ Petition No.38899 of 1997, whereby the writ petition filed by the respondent, Anand Kumar Verma, was allowed with a direction to the District Judge, Varanasi, to offer appointment to the respondent-writ

petitioner against a vacant post in the Class III cadre, with the following observation:

"In the meantime, certain ad hoc employees filed Writ Petition No. 16984 of 1994 seeking a direction for consideration of the regularisation on Class III post under the judgeship of district Varansi. The said writ petition was disposed of by this Court vide order dated 30.10.1995 with the direction that the then District Judge will decide the question of regularisation in the light of observations made in the case of Civil Misc. Writ Petition No. 9913 of 1990 Adya Prasad Mishra & Ors. Vs. State of U.P. & Ors. decided on 24.03.1994.

In compliance of the aforesaid orders of this Court, certain ad hoc employees were regularised and, accordingly, an arrangement was made by the District Judge for their posting vide order dated 12.12.1995. The effect of the aforesaid regularisation of the ad hoc appointees was that the appointment of the selected candidates whose name find place in the select list, was not made on the existing vacancies.

The effect of the directions contained in the case of Adya Prasad Mishra (supra) for regularisation of ad hoc employees qua the selected candidates has been subject matter of consideration by a learned Single Judge of this Court in the case of Arvind Kumar Pandey & Ors. Vs. High Court Of Judicature, Allahabad through Registrar & Ors., 1998 UPLBEC (2) 1370. After considering the ratio of the decisions in the case of Adya Prasad Mishra (supra) as well as Full Bench decision of this Court in the case of Devendra Nath Srivastava Vs. State of U.P. & Ors., (1996) 2 UPLBEC 1037 as well as Division Bench decision in the case of Subedar Singh Vs. District Judge, Mirzapur, 1997 (1) ESC 655 (All), learned Single Judge in the case of Arvind Kumar Pandey (supra) held as under.

"5. There is no dispute about the facts of the case. It is an admitted fact that the names of the petitioners are incorporated in order of merit in the select list which form part of the decision in Adya Prasad Misra's case (supra). It is also not disputed that there is clear and specific direction that the appointments are to be made of the selectees till the select list is exhausted, regardless of the time factor. The only point which arises for determination in the present petition is that whether the directions contained in Adya Prasad Misra's case survive after the Full Bench decision of this Court in Deuendra Nath Srivastava's case (supra), which limits the life of the select list for a period of one year and the subsequent decision of the Division Bench, dated 24.2.1997 in Subedar Singh and another v. District Judge, Mirzapur and others, 1997 (1) ESC 655 (All), in which it was held that decision in Adya Prasad Misra's case "did not lay down law correctly".

6. The decision by the Division Bench of this Court in Subedar Singh's case (supra), was rendered with reference to the controversy raised by certain ad hoc employees of other districts for regularization of their services under the U.P. Regularisation of Ad hoc Appointments, (on posts outside the purview of Public Service Commission) Rules. 1979, in which, by way of subsequent notification, the cut off date was fixed as 1.10.1986. The decisions in Adya Prasad Misra's case (supra) as well as Arvind Kumar Yadav and others v. State of U.P. and others, (1994) 2 UPLBEC 1019, came to be considered and it was held in Para 22 of Subedar Singh's case as under:

"22. In our view the benefit of regularisation policy crystallised in statutory rules cannot be extended by judicial pronouncement, since its extension would amount to legislation, which does not fall within the function of the Court. We are, with respect, accordingly, of the view that the decision in Adya Prasad Misra v. State of U.P. also did not lay down the law correctly."

The above observation made in Subedar Singh's case does not completely wipe off or efface the decision in Adya Prasad Misra's case (supra), particularly with reference to the directions made in regard to the outsiders whose names are found in the select list. The observation that Adya Prasad Misra's case (supra), does not lay down the law correctly was made with reference to the variation made about the cut off date and the direction about the regularization of the services of those employees who were appointed on ad hoc basis after the cut off date, i.e., 1.10.1986. The direction with regard to the appointment of the outsiders/selectees was not even touched upon or discussed in Subedar Singh's case (supra). The decision in Adya Prasad Misra's case (supra), therefore, remains intact and totally unaffected by the subsequent decision of Division Bench in Subedar Singh's case (supra) insofar as it relates to the direction made about the appointment of the selectees/outsideers. My considered opinion in the matter is that the decision in Adya Prasad Misra's case with regard to the directions made about the petitioners is not, in any manner, wiped off and the direction No. 4 contained in the decision, as quoted above and which has become final, has to be implemented. Neither expressly nor by implication Adya Prasad Misra's case can be said to have been overruled in all respects by the Division Bench decision in Subedar Singh's case (supra).

7. Now, let us test the direction No. 4, referred to above, in Adya Prasad Misra's case with reference to the decision of the Full Bench of this Court in Devendra Nath Srivastava's case. The ratio decidendi in Devendra Nath Srivastava's case (supra) is that the life of the select list prepared under the Rules of 1947 is only for a period of one year and after the expiry of the period of one year, the select list ceases to exist and no appointment can be made from the select list after a period of one year. Learned standing counsel on behalf of the respondents urged that the decision in Devendra Nath Srivastava's case (supra) which has the effect of issuing general binding direction would have the effect of nullifying the direction No. 4 made in Adya Prasad Misra's case (supra), inasmuch as, the select list which formed part of the decision in Adya Prasad Misra's case, has to remain operative only for a period of one year. Sri. Ashok Khare, learned counsel for the petitioners repelled the above submission and painstakingly pointed out that even if the decision in Adya Prasad Misra's case (supra) is termed to be erroneous and against the later decision of the Full Bench of this Court, directions contained in it have to be given effect to as the said decision, which is inter partes, has become final and on the principle of res judicata, direction No. 4 contained in the decision of Adya Prasad Misra's case (supra), cannot be thwarted. I find considerable force in the contention of Sri Ashok Khare. If the principle of resjudicata has any meaning, direction No. 4 contained in Adya Prasad Misra's case (supra), would be valid and effective. The said direction cannot be rendered illusory and nugatory merely on the ground that subsequently a Full Bench of this Court has ruled that the life of the select list would be only for a period of one year. The decision in Adya Prasad Misra's

case was inter partes. Inasmuch as, two of the present petitioners were also petitioners in Civil Misc. Writ No. 34562 of 1993 which was clubbed and decided with leading Writ Petition No. 9913 of 1990, Adya Prasad Misra v. State of U. P. and others. On the basis of direction No. 4 contained in the said judgment, as many as 15 persons from the select list have been extended the benefit of appointment. The petitioners as well as other outsiders, who are placed in the select list, cannot be made the victims of discrimination. It would be unwise, unjustified and unfair to extend a particular type of favourable treatment to one set of persons and to deny the similar treatment to the remaining candidates on the ground that subsequently some general directions have come to be made by a Full Bench. With all respect at my command to the decision made by the Full Bench in Devendra Nath Srivastava's case (supra), I am of the view that direction No. 4 contained in Adya Prasad Misra's case has to be given effect to and the successful candidates in the select list have to be given appointment in order of their merit against the existing vacancies or the vacancies which may arise in near future and this process shall go on till the select list is finally exhausted. There are other reasons which have impelled me to take the above view. This fact cannot be lost sight of that initially 51 posts were advertised. All these 51 posts were, therefore, to go to the selectees. It was on account of the directions about regularization of the ad hoc employees under the 1979 Rules that substantial number of vacancies were consumed by the ad hoc employees leaving outsider selectees in a lurch, without no fault of theirs. There would have been no dispute or controversy if the ad hoc employees had not conjured up substantial number of vacancies in the light of the decision in Adya Prasad Misra's case (supra). Learned single Judge while issuing various directions in Adya Prasad Misra's case was conscious of this fact and it was for this reason that he had, with all awareness and to balance the rights of the parties, issued direction No. 4 and on equitable considerations, commanding that the candidates in the select list shall continue to be appointed till the list is exhausted. The direction to regularise the ad hoc appointees did not only have the effect of reducing the number of vacancies which would otherwise have been available to the outsider selectees, but some of the ad hoc employees who had failed to compete with the outsiders in the written examination too have been able to secure the appointments. Now, when the ad hoc appointees have been regularised in service-whether rightly or wrongly, and they have been continuously working for the last more than a decade, it would be difficult to disturb the vested rights which they have acquired. Therefore, the only via media left was to confer the benefit of appointment on the petitioners and other candidates appearing in the select list even after the expiry of the period of one year during which the select list was to remain in force. If this benefit would not have been conferred, most of the petitioners would have become overage with the result, their chances to seek any other public employment would have been totally marred. It was for all these considerations that Hon'ble A. S. Tripathi, J., has made a conscious direction No. 4 in his decision in Adya Prasad Misra's case (supra).

8. The direction that the petitioners and other selectees shall continue to be appointed as and when the vacancies arise till the list is exhausted is not, in any manner, whittled down by the decision of the Full Bench in Devendra Nath Srivastava's case (supra). The administrative directions issued by this Court to the District Judge have to be ignored as they are clearly against the Judicial direction contained in Adya

Prasad Misra's case (supra), which in all respects, has become final insofar as it related to the appointment of the selectees/outsideers."

In this case also judgment dated 30.11.1995 rendered in Writ Petition No. 31053 of 1995 in between the parties directing the select list to be valid for a period of three years, became final as there is nothing on record to indicate that the same was ever challenged. It is well settled that even if the judgment of a Court is wrong, it is binding on the parties and the question decided in it, cannot be reopened in proceedings/cases initiated subsequently. In view of above fact also, the time of the select list has to be treated to be three years.

Thus, the argument advanced with much vehemence by Shri Ranjan Srivastava for the respondents that the name of the candidates automatically got removed from the register of the recruited candidate after one year when the select list lost its life, has no force and is not liable to be accepted.

The facts of this case are identical to that of Arvind Kumar Pandey (supra) and ratio laid down therein, with which I am in respectful agreement, is applicable with full force and the petitioner herein is entitled to same benefits.

In view of the above, the petitioner is entitled for appointment on a Class III ministerial post in the judgeship of Varansi against the existing vacancy.

Shri Ranjan Srivastava on the basis of the instructions received from District Judge, Varansi has made a statement that there are vacancies available in the district judgeship wherein the petitioner could be adjusted.

Shri Kishan Ji Khare, learned counsel appearing for the petitioner has made a statement that the petitioner shall not claim any back wages, though he shall be entitled for the other consequential benefits.

In the result, writ petition stands allowed. District Judge, Varansi is hereby directed to offer appointment to the petitioner on a vacant post of Class III cadre within a period of one month from the date of production of a certified copy of this order before him."

Factual Matrix

3. The undisputed facts emerging from the pleadings are delineated hereinafter for proper appreciation of the controversy in question:

3.1. An advertisement was published in the newspaper 'Gandeev' on 05.06.1993 for recruitment and selection to Class III posts in the District Judgeship, Varanasi. By the said advertisement, even ad hoc employees discharging their duties in the said Judgeship were permitted to participate in the selection process. The written examination was conducted on 10.10.1993; however, the same was subsequently cancelled

pursuant to the orders passed by this Court. Thereafter, a fresh written examination was conducted on 22.04.1994. A select list was prepared on 18.06.1994 in accordance with the procedure contemplated under Rule 14(3) of the U.P. Subordinate Civil Courts Ministerial Establishment Rules, 1947 (For brevity, 'the Rules, 1947').

3.2. The District Judge, Varanasi proceeded to pass an order dated 18.10.1995 cancelling the select list on the premise that the life span of the select list was limited to one year in terms of Rule 14(3) of the Rules, 1947, and, further, in view of the directions issued by this Court in Special Appeal No. 278 of 1993 (*Ajay Kumar Asthana v. State of U.P.*) and Special Appeal No. 263 of 1993 (*Rajesh Kumar Singh v. State of U.P.*), the select list prepared on 18.06.1994 had become inoperative after 17.06.1995. Accordingly, the remaining select list of candidates dated 18.06.1994 was cancelled with immediate effect vide order dated 18.10.1995 already noticed. The order dated 18.10.1995 passed by the then District Judge, Varanasi, in extenso reads as under:

"I have gone through the Circular Letter No. 77/ve-4/adun. (D), Dated 24-8-1994 as well as judgments of special appeal no.278 of 1993, Ajay Kumar asthana Va. State of U. P. and others delivered by the Hon'ble Mr.Justice S.S. Sodhi and Hon'ble Mr. Justice G. P. Mathur and Special Appeal no.263 of 1993, Rajesh Kumar Singh Vs. State of U.P. and another delivered by Hon'ble Mr. Justice S. C. Mathur, the then acting Chief Justice of U.P. and Hon'ble Mr. Justice R. A. Sharma and I find that the select list is to enure for only a period of one year. Keeping in view the circular and Judgments I hereby cancel the remaining list of the selected candidates dated 18-6-1994 with immediate effect.

Let this order be displayed on the Notice Board for general information."

3.3. In the meantime, Writ Petition No. 16984 of 1994, filed by the ad hoc employees of the District Judgeship, Varanasi, was disposed of vide order dated 30.10.1995, with a direction to consider their regularization in the light of the judgment and order passed in Civil Misc. Writ Petition No. 9913 of 1990 (*Adya Prasad Mishra v. State of U.P.*), decided on 24.03.1994. The relevant portion of the order dated 30.10.1995 passed in Writ Petition No. 16984 of 1994 reads:

“The District Judge, Varanasi is also directed to consider the case of petitioner for regularization within a period of two months from the of the production a certified copy of this order along with copy of judgement of Hon’ble A.S. Tripathi, J dated 24.03.1994. In case, District Judge is not inclined the said principle as laid down on the aforesaid case, the said authority shall give specific reasons in support of his conclusion so that the petitioners may move higher up.”

3.4. In sum and substance, the order dated 30.10.1995 passed in Writ Petition No. 16984 of 1994 was intended to extend the benefit of the judgment and order dated 24.03.1994 passed in Civil Misc. Writ Petition No. 9913 of 1990, titled ***Adya Prasad Mishra v. State of U.P.*** Thus, it would be apposite to refer to the operative portion of the order passed in ***Adya Prasad Mishra (supra)***, which is extracted hereunder:

“98. Therefore, it is hereby directed by a writ of mandamus as follows:

(1) The ad-hoc employees who were appointed on 7-8-1949 and continued service even with artificial breaks shall be regularised provided they are found eligible for the post and their work and conduct found satisfactory fit committee to be appointed by the District Judge, Gorakhpur;

(2) The ad-hoc appointees who were appointed before 21-5-1992 shall also be considered for regularisation by the same committee, the moment they complete three year of service;

(3) The ad-hoc appointees who were appointed after 21-5-1992 and if continuing in service may also be retained and their regularisation may be considered, if they continued for more than three years before any regular test that held in the meantime. If a regular test is, held in the meantime they shall appear in the test and that fate will depend upon the result of that test.

(4) The select list prepared on the basis of regular test held on 9-9-1990 is declared and a copy of the same is attached with the judgment. The appointment to the existing vacancies shall be made from this list in order of merit and this list shall remain operation till it is exhausted.

(5) The seniority of the persons who will be appointed from the regular list which was attached with the judgment has to be maintained and they shall be placed just below the persons who were appointed before 7-8-1989 and are continuing in service. The seniority of, the remaining ad-hoc employees who if will be regularised in due course shall be below the persons appointed from the regular list as mentioned, above.

(6) The District Judge, Gorakhpur shall appoint a Committee of the Judicial Officers for the purpose as aforesaid that committee examine the matter and submit its report within a month of its appointment and the District judge, Gorakhpur shall pass the appropriate order thereafter in the light of the directions made above.

(7) The ad-hoc employees, working in Class-IV, who are Petitioner in the writ petition No. 9999 of 1990 shall be regularised. The remaining appointment in Class IV shall be made from the select list prepared by the District judge, Gorakhpur till same is exhausted.”

3.5. This Court cannot lose sight of the fact that Writ Petition No. 16984 of 1994 was filed by ad hoc appointees, in which the benefit of the judgment and order dated 24.03.1994 passed in C.M.W.P. No. 9913 of 1990 was extended. Thus, out of the seven directions issued in *Adya Prasad Mishra* (supra), the direction pertaining to ad hoc appointees was extended to the ad hoc appointees who were petitioners in Writ Petition No. 16984 of 1994.

3.6. In the meantime, the decision of the District Judge, Varanasi, treating the select list dated 18.06.1994 as having become inoperative upon the expiry of one year from the date of its preparation, and consequently cancelling the same vide express order dated 18.10.1995, was challenged by Manoj Kumar Srivastava and some other persons in Civil Misc. Writ Petition No. 31053 of 1995. This Court allowed the writ petition vide order dated 30.11.1995, quashed the order dated 18.10.1995 passed by the District Judge, Varanasi, and directed that the select list would remain operative and valid up to 18.06.1997, thereby extending life of select list upto a period of three years. The operative portion of the order dated 30.11.1995 is extracted hereunder:

“The only question involved in the present writ petition is whether the impugned order cancelling the select list is valid and proper.

Petitioners contend that in view of extension of the life of the select list from one year to three years as communicated by the circular letter dated 28-7-1994 at Annexure 3 to the writ petition, the impugned order is bad. The learned counsel for the respondents contends that in view of the circular dated 24-8-1994 and the Judgments in the Special Appeals referred to in the said circular, the impugned order is valid and proper.

After hearing the learned counsel for the parties and perusing the materials on record. I find that the circular letter dated 24-8-1994 at annexure to the writ petition was referring to two judgments in two special appeals. The guidelines referred to therein were relating to short-term leave vacancy and appointments against then. The said judgments did not consider the extension of life of the select list, as has been done and communicated by circular letter dated 28-7-1994 at Annexure 3 to the writ petition

Perusing the judgments in the said two special appeals, it is apparent that the select list which were being considered in the said two special appeals were

having the life of one year period and in that back ground observations have been made in the said Judgments.

In the aforesaid circumstances, I do not think that the observations made in the said two special appeals or the guidelines issued on the basis thereof can decide in any manner as to the life of the present select list. Apparently, the circular letter dated 28-7-1994 commented extion of the life of the select list to three years from one year and so against such clear circular the observations in the said judgements of the special appeals or the guidelines prepared on that basis cannot prevail. It is also to be noticed that the circular dated 24.8.1994 did not supersede or cancel the circular letter dated 28-7-1994.

In view of the aforesaid findings, I am of the view that the order dated 18-01-1995 at annexure 7 to the writ petition was passed upon misconception by the respondent no.1.

Accordingly, the writ petition succeeds and is allowed. The impigned order dated 18-10-1995 at Annexure 7 to the writ petition is hereby quashed. The select list dated 10-6-1997 is required to be treated as valid upto 18-5-1997. There will be no order as to costs. The stay order dated 2-11-1995 is hereby vacated.”

3.7. The District Judge, Varanasi, in compliance with the order dated 02.03.1994 passed by this Court in *Adya Prasad Mishra* (supra), regularized the services of the ad hoc appointees and posted them against the existing vacancies vide order dated 12.12.1995. The effect of the aforesaid regularization of the ad hoc appointees was that the selected candidates whose names found place in the select list could not be appointed against the existing vacancies.

3.8. In the meantime, the Full Bench of this Court, in **Devendra Nath Srivastava v. State of U.P., (1996) 2 UPLBEC 1037**, held that the life of a select list prepared under the Rules, 1947 is one year and that such list ceases to exist upon expiry of one year, consequently, no appointment can be made thereafter. The relevant remarks in the judgment of Full Bench read:

“24. Second proviso to Rule 15 (2) only confers the right of such person who had been working on the date the Rules came into force and working in the Judgeship in some capacity and he had appeared for the selection and his name finds place in select list. Any other interpretation would lead to perplexing results. Rule 14(3) provides that if a candidates who has not been given an appointment in strict order of seniority according to the list in the bound register prescribed under sub-rule (1) within one year from the date of his recruitment, his name shall be automatically removed from the register of recruited candidacies. In case the appointing authority makes any appointment on ad hoc basis after the expiry of the said period, he shall be acting in total disregard of sub-rule (3) of Rule 14. A person cannot claim any right on the basis of such appointments claiming the benefit under the second proviso to Rule 15(2). This proviso cannot be given the meaning to enlarge the period of one year provided under Rule 14 (3) of the, Rules, The proviso cannot en-

large the period which has been given in the substantive provision unless there is an express intention to the contrary in the context of the provision of the Statute. A proviso must prima facie be considered in relation to the principal matter to which it is a proviso.”

3.9. In **Subedar Singh v. District Judge, Mirzapur, 1997 ESC 650**, this Court held that the judgment in **Adya Prasad Mishra (supra)** ‘did not lay down the law correctly’. The relevant observations in **Subedar Singh (supra)** is reproduced hereunder:

“In our view the benefit of regularisation policy crystalised in statutory rules cannot be extended by judicial pronouncement, since its extension would amount to legislation, which does not fall within the function of the Court. We are, with respect, according, of the view that the decision in Adya Prasad Mishra v. State of U.P also did not lay down the law correctly.”

3.10. It is not in dispute that the present writ petition was instituted on 18.11.1997 with the following principal prayer:

“..It is, therefore, most respectfully pray 3 that this (Hon'ble Court may be pleased to:

(i) issue a writ order or direction in the nature of Mandamus directing the Respondent nos. 1 and 2 not to treat the list of selected candidate in operative after 18.6.1997

(ii) issue a writ order or direction in the nature of mandamus commanding the Respondents (appointing authority to make appointment immediately from the list counting the period of three years from the date of entry in the bound register in order of merit.

(iii) issue a writ order or direction in the nature of Mandamus commanding the Appointing authority to make appointments from the aforesaid select list for the posts which were filed either by way of regularising the ad hoc appointees or by way of protection after making appointments on the select list.

(iv) issue a writ order or direction in the nature of mandamus commanding the Respondent nos.1 and 2 to adjust the period with effect from in computing period of three years from the date of entry made in the bound register in order to merit as the said period has been put in loss due to illegal action of the Respondents.”

3.11. The pleadings were exchanged, and the writ petition was ultimately decided in favour of respondent No. 1 vide the order under challenge, whereby the life of the select list was extended beyond 18.06.1997, i.e., until it culminated in an appointment. In compliance with the order under challenge, respondent No. 1 was offered appointment against a ministerial post and has been continuing in service ever since.

3.12. One Arvind Kumar Pandey also invoked the writ jurisdiction of this Court, where this Court considered the principle laid down in **Adya**

Prasad Mishra (*supra*), the Full Bench decision in **Devendra Nath Srivastava** (*supra*), and the Division Bench judgment in **Subedar Singh** (*supra*). The learned Single Judge, in **Arvind Kumar Pandey and Others v. High Court of Judicature at Allahabad through Registrar and Others**, 1998 UPLBEC 1370, held that the petitioners and other selectees were entitled to be appointed as and when vacancies arose, until the select list was exhausted. The learned Single Judge further observed that the Full Bench decision in **Devendra Nath Srivastava** (*supra*) had not whittled down or diluted the decision in **Adya Prasad Mishra** (*supra*). It was further observed that the administrative circulars restricting the life of a select list to one year, and subsequently, erroneously, to three years, which were later withdrawn, would have no significance in view of the judicial pronouncements in **Adya Prasad Mishra** (*supra*).

Submission on behalf of learned counsel for the Appellant

4. Learned Counsel for the Appellant submitted that Rule 14(3) of the Rules, 1947, automatically removes the name of a candidate who is not appointed within one year, which made the select list inoperative by operation of law and no express order was required. Thus, the learned Single Judge has passed the order under challenge in utter ignorance of the statutory prescription carried in aforesaid Rules.

5. In order to bolster his submissions, he has relied upon the Full Bench decision of this Court in **Devendra Nath Srivastava v. State of U.P.**, (1996) 2 UPLBEC 1037.

6. Emphasizing upon the aforesaid Full Bench decision, learned Special Counsel for the High Court, Varanasi, has contended that the select list ceased to exist after one year and, therefore, no appointment could be offered from the said list. It is submitted that, insofar as future vacancies are concerned, the rights and entitlement of candidates who, with the efflux of time, may acquire the requisite qualification would be adversely affected and they would be subjected to hostile discrimination. Such a course is not contemplated by the mandate of Article 14 read with

Article 16 of the Constitution of India, which guarantees equality and equal opportunity in public employment.

7. The further contention of learned counsel for the appellant is that the circulars are merely advisory in character, being executive fiats, and cannot override or defeat the statutory Rules, particularly Rule 14(3) of the Rules, 1947, more so when the said circular dated 28.07.1994 was subsequently withdrawn vide circular dated 01.03.1997.

8. It is next contended by learned counsel for the appellant that the judgment and order dated 30.11.1995 rendered in the case of **Manoj Kumar Srivastava** (*supra*) would bind only the parties thereto, and the respondent, not being a party to the said proceedings, is not entitled to derive any benefit therefrom.

9. Learned counsel for the appellant has relied upon the Division Bench judgment of this Court in **District Judge, Baghpat v. Anurag Kumar**, 2005 (2) ESC 1509, wherein it has been held that a selected candidate has no right against future vacancies. The relevant observations is **Anurag Kumar** (*supra*) are reproduced hereinbelow:

“Then comes Rule 10 of the 1947 Rules which provides for an advertisement inviting applications in a particular form which should particularly disclose the number of candidates to be recruited. The advertisement, therefore, will be presumed to have included only such number of vacancies/posts which are available in accordance with the calculation made under Rule 9 and no other future vacancy. The Rule does not contemplate advertisement of future vacancies which can be taken into account after the advertisement has been made.

The recruitment thereafter is to be made on the basis of the result of the examination under Rule 11 and for the said purposes, the list of selected candidates has to be entered in a register in order of merit to be maintained by the District Judges under Rule 14. Sub-rule 3 of Rule 14, in no uncertain terms, provides that in case a candidate who has not been offered appointment in accordance with the said list within one year from the date of his recruitment, his name shall automatically be removed from the register.

A perusal of the aforesaid Rules would establish that the number of vacancies which have to be advertised are to be in accordance with the Rule 9 and, therefore, the recital in the advertisement that the vacancies are likely to increase or decrease has to be strictly construed in accordance with the aforesaid Rules. What logically follows is that the District Judge is not at liberty to prepare a list dehors the number of vacancies advertised. This position stands further clarified by the Circular Letter No. 9/VIIb-104 Admin.

Dated 29.04.1999 issued by the High Court which clearly states that the select list shall not be prepared by the District Judges for more than the double of the vacancies advertised. The said Circular has been referred to in the report of the then learned Administrative Judge, Baghat in his report which has been appended as Annexure-1 to the stay application in this appeal. In the instant case, 72 persons were enlisted for recruitment on 05.04.2000 as against 10 vacancies, which stood advertised.

On the basis of the aforesaid provisions and the Circular, referred to hereinabove, it is explicit that the select list, which was prepared on 5th April, 2000, was in flagrant violation of the Rules, referred to above. The then District Judge has proceeded to prepare the list in an absolute arbitrary and whimsical fashion which list could not have included, by any means, more than 20 names. The first step of derailment of the process of selection seals the fate of all such candidates who are claiming themselves to have been appointed under the said list in excess of first twenty names and leaves no room for doubt that the select list was prepared with some oblique and ulterior motive.

The petitioners are admittedly much below the 20 candidates in the merit list dated 05.04.2000 and as such they could not have been included in the list prepared by the District Judge. Their very inclusion is invalid. The same is the position with regard to such other candidates who stand on a similar footing. The District Judge proceeded to place 52 persons in the select list in excess of 20 names, including that of the petitioners, and subsequently appointed them which appointments are also invalid, as they are from the same invalid list. We, therefore, hold that the preparation of the select list in excess of 20 names was absolutely illegal and contrary to the Rules applicable. The question of preparing the select list of more than 20 or filling up the vacancies against more than 10 posts is in contravention of Articles 14 and 16 of the Constitution of India.”

Submission on behalf of the respondents

10. Learned counsel for the respondent, Mr. Manu Khare, submitted that the order under appeal has already been given effect to and that the respondent-writ petitioner has been serving for more than 14 years. It was further submitted that the respondent-writ petitioner is likely to attain the age of superannuation within the next few months. In view of these peculiar facts and circumstances, particularly the fact that the respondent-writ petitioner is nearing the age of superannuation, the equitable jurisdiction under Article 226 of the Constitution of India ought not be exercised in favour of the appellant-District Judge, Varanasi, and against the respondent-writ petitioner.

11. The further contention of Mr. Khare is that the respondent-writ petitioner did not secure any backdoor entry into public employment; rather, he appeared in the written examination and, having been

shortlisted as a meritorious candidate, he had every right to be appointed against the vacancies in question.

12. It was incumbent upon the appellant-District Judge, Varanasi, to have challenged the order whereby the counterparts of the respondent-writ petitioner were regularised by giving them preference, resulting in the exhaustion of the available vacancies. The respondent-writ petitioner cannot, therefore, be said to be at fault in any manner.

13. Learned counsel for the respondent, Mr. Manu Khare, has relied upon the judgment of the Supreme Court in **Vikas Pratap Singh and Others v. State of Chhattisgarh and Others**, reported in (2013) 14 SCC 494, particularly paragraphs 20, 25 and 26, which read:

“20. It is brought to our notice that in view of the interim orders passed by the learned Single Judge the appellants have now completed their training and have been in service for more than three years. Therefore the only question which survives for our consideration and decision is whether after having undergone training and assumed charge at their place of posting the 26 appellants be ousted from service on the basis of cancellation of their appointment qua the revised merit list.

25. This Court in Gujarat State Dy. Executive Engineers' Assn. v. State of Gujarat [1994 Supp (2) SCC 591 : 1994 SCC (L&S) 1159 : (1994) 28 ATC 78] although recorded a finding that appointments given under the “wait list” were not in accordance with law but refused to set aside such appointments in view of length of service (five years and more).

26. In Buddhi Nath Chaudhary v. Abahi Kumar [(2001) 3 SCC 328 : 2001 SCC (L&S) 589 : (2001) 2 SCR 18] even though the appointments were held to be improper, this Court did not disturb the appointments on the ground that the incumbents had worked for several years and had gained experience and observed: (SCC p. 331, para 6)

“6. ... We have extended equitable considerations to such selected candidates who have worked in the post for a long period....”

(See M.S. Mudhol v. S.D. Halegkar [(1993) 3 SCC 591 : 1993 SCC (L&S) 986 : (1993) 25 ATC 91 : (1993) 2 LLJ 1159] and Tridip Kumar Dingal v. State of W.B. [(2009) 1 SCC 768 : (2009) 2 SCC (L&S) 119])”

14. Further reliance has been placed upon the judgment of the Supreme Court in **Anmol Kumar Tiwari v. State of Jharkhand**, (2021) 5 SCC 424, particularly paragraphs 9, 11 and 12 thereof, which read:

“9. The State Government contended that the High Court ought not to have directed the appointment of the writ petitioners as they were initially appointed due to irregularities committed by the authorities in the selection process. After the revision of the select list, the writ petitioners were replaced by others who secured more marks than them. The learned Additional Advocate General made an attempt to distinguish the judgment of this Court in Vikas Pratap Singh case [Vikas Pratap Singh v. State of Chhattisgarh, (2013) 14 SCC 494 : (2013) 3 SCC (L&S) 100] by arguing that the period of service rendered by the writ petitioners is much lesser than the period of service of those in the case decided by this Court. The learned Additional Advocate General submitted that 39 out of 42 writ petitioners were reinstated due to the orders passed in contempt proceedings after being informed that the reinstatements were subject to the result of these appeals. According to the learned Additional Advocate General, the statement made on behalf of the Government that there were no vacancies for appointing the interveners cannot be found fault with. He submitted that the vacancies that arose after 2008 were due to the restructuring of the police force. He further submitted that the interveners in the writ petitions have no right to seek appointment as only 384 posts of Sub-Inspectors were advertised.

11. Two issues arise for our consideration. The first relates to the correctness of the direction given by the High Court to reinstate the writ petitioners. The High Court directed reinstatement of the writ petitioners after taking into account the fact that they were beneficiaries of the select list that was prepared in an irregular manner. However, the High Court found that the writ petitioners were not responsible for the irregularities committed by the authorities in preparation of the select list. Moreover, the writ petitioners were appointed after completion of training and worked for some time. The High Court was of the opinion that the writ petitioners ought to be considered for reinstatement without affecting the rights of other candidates who were already selected. A similar situation arose in Vikas Pratap Singh case [Vikas Pratap Singh v. State of Chhattisgarh, (2013) 14 SCC 494 : (2013) 3 SCC (L&S) 100], where this Court considered that the appellants therein were appointed due to an error committed by the respondents in the matter of valuation of answer scripts. As there was no allegation of fraud or misrepresentation committed by the appellants therein, the termination of their services was set aside as it would adversely affect their careers. That the appellants therein had successfully undergone training and were serving the State for more than 3 years was another reason that was given by this Court for setting aside the orders passed by the High Court. As the writ petitioners are similarly situated to the appellants in Vikas Pratap Singh case [Vikas Pratap Singh v. State of Chhattisgarh, (2013) 14 SCC 494 : (2013) 3 SCC (L&S) 100], we are in agreement with the High Court that the writ petitioners are entitled to the relief granted. Moreover, though on pain of contempt, the writ petitioners have been reinstated and are working at present.

12. The second issue relates to the claim of the interveners in the writ petitions for appointment. There is no doubt that selections to public employment should be on the basis of merit. Appointment of persons with lesser merit ignoring those who have secured more marks would be in violation of Articles 14 and 16 of the Constitution of India. The interveners in the writ petitions admittedly have secured more marks than the writ petitioners. After cancellation of the appointments of the writ petitioners, 43 persons have been appointed from the revised select list. Those 43 persons have secured more marks than the interveners. By the appointment of 43 persons, the number of posts that were advertised i.e. 384 have been filled up. The interveners have no right for appointment to posts beyond those advertised. The contention on

behalf of the interveners in the writ petitions is that they cannot be ignored when relief is granted to the writ petitioners who were less meritorious than them. We are unable to agree. Relief granted to writ petitioners is mainly on the ground that they have already been appointed and have served the State for some time and they cannot be punished for no fault of theirs. The interveners are not similarly situated to them and they cannot seek the same relief. The other ground taken by the interveners in the writ petitions before us is that relief was denied to them only on the basis of a wrong statement made on behalf of the State Government that there were no vacancies. No doubt, the interveners have placed on record material to show that there was no shortage of vacancies for their appointment. One of the reasons given by the High Court for not granting relief to the interveners is lack of vacancies. However, we are not inclined to direct appointment of the interveners as selections in issue pertain to an advertisement issued in 2008. Subsequently, selections to posts of Sub-Inspectors have been held and a large number of persons were appointed. The number of posts advertised in 2008 is 384 and the interveners have no right for appointment for posts beyond those advertised. They cannot claim any parity with the writ petitioners.”

15. Mr. Khare has also placed reliance upon the judgment of the Supreme Court in **B.C. Chaturvedi v. Union of India and Others, (1995) 6 SCC 749**, particularly paragraphs 22, 23, 24 and 25 thereof, emphasising the need for the Courts to render complete justice. The relevant paragraphs reads:

“22. The aforesaid has, therefore, to be avoided and I have no doubt that a High Court would be within its jurisdiction to modify the punishment/penalty by moulding the relief, which power it undoubtedly has, in view of a long line of decisions of this Court, to which reference is not deemed necessary, as the position is well settled in law. It may, however, be stated that this power of moulding relief in cases of the present nature can be invoked by a High Court only when the punishment/penalty awarded shocks the judicial conscience.

23. It deserves to be pointed out that the mere fact that there is no provision parallel to Article 142 relating to the High Courts, can be no ground to think that they have not to do complete justice, and if moulding of relief would do complete justice between the parties, the same cannot be ordered. Absence of provision like Article 142 is not material, according to me. This may be illustrated by pointing out that despite there being no provision in the Constitution parallel to Article 137 conferring power of review on the High Court, this Court held as early as 1961 in Shivdeo Singh case [Shivdeo Singh v. State of Punjab, AIR 1963 SC 1909] that the High Courts too can exercise power of review, which inheres in every court of plenary jurisdiction. I would say that power to do complete justice also inheres in every court, not to speak of a court of plenary jurisdiction like a High Court. Of course, this power is not as wide as which this Court has under Article 142. That, however, is a different matter.

24. What has been stated above may be buttressed by putting the matter a little differently. The same is that in a case of a dismissal, Article 21 gets attracted, and, in view of the interdependence of fundamental rights, which concept was first accepted in the case commonly known as Bank Nationalisation case [Rustom Cavasjee Cooper v. Union of India, (1970) 1 SCC 248 : (1970) 3

SCR 530] , which thinking was extended to cases attracting Article 21 in *Maneka Gandhi v. Union of India [(1978) 1 SCC 248 : AIR 1978 SC 597]*, the punishment/penalty awarded has to be reasonable; and if it be unreasonable, Article 14 would be violated. That Article 14 gets attracted in a case of disproportionate punishment was the view of this Court in *Bhagat Ram v. State of H.P. [(1983) 2 SCC 442 : 1983 SCC (L&S) 342 : AIR 1983 SC 454]* also. Now if Article 14 were to be violated, it cannot be doubted that a High Court can take care of the same by substituting, in appropriate cases, a punishment deemed reasonable by it.

25. No doubt, while exercising power under Article 226 of the Constitution, the High Courts have to bear in mind the restraints inherent in exercising power of judicial review. It is because of this that substitution of the High Court's view regarding appropriate punishment is not permissible. But for this constraint, I would have thought that the law-makers do desire application of judicial mind to the question of even proportionality of punishment/penalty. I have said so because the Industrial Disputes Act, 1947 was amended to insert Section 11-A in it to confer this power even on a labour court/industrial tribunal. It may be that this power was conferred on these adjudicating authorities because of the prevalence of unfair labour practice or victimisation by the management. Even so, the power under Section 11-A is available to be exercised, even if there be no victimisation or taking recourse to unfair labour practice. In this background, I do not think if we would be justified in giving much weight to the decision of the employer on the question of appropriate punishment in service matters relating to government employees or employees of public corporations. I have said so because if need for maintenance of office discipline be the reason of our adopting a strict attitude qua the public servants, discipline has to be maintained in the industrial sector also. The availability of appeal etc. to public servants does not make a real difference, as the appellate/revisional authority is known to have taken a different view on the question of sentence only rarely. I would, therefore, think that but for the self-imposed limitation while exercising power under Article 226 of the Constitution, there is no inherent reason to disallow application of judicial mind to the question of proportionality of punishment/penalty. But then, while seized with this question as a writ court interference is permissible only when the punishment/penalty is shockingly disproportionate.”

16. Further reliance has been placed by Mr. Khare upon the authority of the Supreme Court in **Gujarat State Deputy Executive Engineers Association and Others v. State of Gujarat and Others, 1994 Supp. (2) SCC 591**, particularly paragraph 11 thereof, which reads:

11. The entire appointment of direct recruits, therefore, from the waiting list was not proper. But these persons have been appointed and are working now at least for five years. It would, therefore, be unjust and harsh to quash their selection at this stage. Therefore, while refraining from quashing the appointment made in pursuance of the direction issued by the High Court, we are of the opinion that the waiting list for one year cannot furnish source of recruitment for future years, except in very exceptional cases. It is, however, necessary to add that non-holding of examination at the instance of the Government could not result in reducing the quota of direct recruits to be worked out on the principle for determination of such vacancies. Therefore, if vacancies had collected between 1983 and 1993 due to interim orders passed by the courts, and they have not been taken into account when the examination

for 1993 was held then it would be expedient to direct the Government to work out the same immediately and send the requisition to the Commission for holding selection for if the next examination is going to be held within one year from today. We may clarify that it is nobody's case that the quota rule has broken. Therefore the direction is being issued to protect the quota of direct recruits during 1983 to 1993 in the peculiar facts of the present case.

17. Mr. Khare has also placed reliance upon the judgment of the Supreme Court in **Dr. M.S. Mudhol and Another v. S.D. Halegkar and Others, reported in (1993) 3 SCC 591**, particularly paragraphs 6, 7 and 8 thereof, which reads:

“6. Since we find that it was the default on the part of the 2nd respondent, Director of Education in illegally approving the appointment of the first respondent in 1981 although he did not have the requisite academic qualifications as a result of which the 1st respondent has continued to hold the said post for the last 12 years now, it would be inadvisable to disturb him from the said post at this late stage particularly when he was not at fault when his selection was made. There is nothing on record to show that he had at that time projected his qualifications other than what he possessed. If, therefore, in spite of placing all his cards before the selection committee, the selection committee for some reason or the other had thought it fit to choose him for the post and the 2nd respondent had chosen to acquiesce in the appointment, it would be inequitable to make him suffer for the same now. Illegality, if any, was committed by the selection committee and the 2nd respondent. They are alone to be blamed for the same.

7. Whatever may be the reasons which were responsible for the non-discovery of the want of qualifications of the 1st respondent for a long time, the fact remains that the court was moved in the matter after a long lapse of about 9 years. The post of the Principal in a private school though aided, is not of such sensitive public importance that the court should find itself impelled to interfere with the appointment by a writ of quo warranto even assuming that such a writ is maintainable. This is particularly so when the incumbent has been discharging his functions continuously for over a long period of 9 years when the court was moved and today about 13 years have elapsed. The infraction of the statutory rule regarding the qualifications of the incumbent pointed out in the present case is also not that grave taking into consideration all other relevant facts. In the circumstances, we deem it unnecessary to go into the question as to whether a writ of quo warranto would lie in the present case or not, and further whether mere laches would disentitle the petitioners to such a writ.

8. However, we must make it clear that in the present case the 2nd respondent, Director of Education had committed a clear error of law in approving the academic qualifications of the 1st respondent when he was not so qualified. As pointed out above, the interpretation placed by him and the other respondents on the requisite educational qualifications was not correct and the appointments made on the basis of such misinterpretation are liable to be quashed as being illegal. Let this be noted for future guidance.”

18. Lastly, Mr. Khare has placed reliance upon a Division Bench judgment of this Court in **Anita Rani vs. State of U.P and others, Special Appeal No. 646 of 2025**, authored by one of us (Indrajeet Shukla, J.), wherein, relying upon the judgment of the Supreme Court in **Vikas Pratap Singh (supra)** and various other authorities of the Supreme Court, the long continuance in service pursuant to the appointment was protected. He has placed reliance upon paragraphs 14, 15, 16 and 17 thereof, which read:

14. Learned Senior Counsel strenuously urged that the respondents cannot be permitted to annul the appointment at a belated stage, i.e. after lapse of more than 7 years as the appointment was made on 2nd July, 2016 and the order of termination has been passed on 28.10.2023.

15. The counsel for the appellant in order to get the appointment saved has specifically relied upon paragraph nos.26 & 27 of the judgement of Hon'ble Supreme Court rendered in case of Radhey Shyam Yadav Versus State of U.P. and others reported in (2024) 11 SCC 770 wherein the appointment of appellant therein having served 6 years was saved as same was not result of fraud and misrepresentation. For ready reference paragraph nos. 26 & 27 of the judgement of Hon'ble Supreme Court in Radhey Shyam Yadav (supra) are extracted as under:-

“26. In Vikas Pratap Singh (supra), this Court, while protecting the selection of the appellants, had the following to say:- “27. Admittedly, in the instant case the error committed by the respondent board in the matter of evaluation of the answer scripts could not be attributed to the appellants as they have neither been found to have committed any fraud or misrepresentation in being appointed qua the first merit list nor has the preparation of the erroneous model answer key or the specious result contributed to them. Had the contrary been the case, it would have justified their ouster upon re-evaluation and deprived them of any sympathy from this Court irrespective of their length of service.”

27. Vikas Pratap Singh (supra) was followed in Anmol Kumar Tiwari and Others vs. State of Jharkhand and Others, (2021) 5 SCC 424. This Court, in para 11, held as follows:-

“11. Two issues arise for our consideration. The first relates to the correctness of the direction given by the High Court to reinstate the writ petitioners. The High Court directed reinstatement of the writ petitioners after taking into account the fact that they were beneficiaries of the select list that was prepared in an irregular manner. However, the High Court found that the writ petitioners were not responsible for the irregularities committed by the authorities in preparation of the select list. Moreover, the writ petitioners were appointed after completion of training and worked for some time. The High Court was of the opinion that the writ petitioners ought to be considered for reinstatement without affecting the rights of other candidates who were already selected. A similar situation arose in Vikas Pratap Singh case where this Court considered that the appellants therein were appointed due to an error committed by the respondents in

the matter of valuation of answer scripts. As there was no allegation of fraud or misrepresentation committed by the appellants therein, the termination of their services was set aside as it would adversely affect their careers. That the appellants therein had successfully undergone training and were serving the State for more than 3 years was another reason that was given by this Court for setting aside the orders passed by the High Court. As the writ petitioners are similarly situated to the appellants in Vikas Pratap Singh case, we are in agreement with the High Court that the writ petitioners are entitled to the relief granted. Moreover, though on pain of contempt, the writ petitioners have been reinstated and are working at present."

16. We are persuaded to grant limited indulgence in view of the Judgment of Hon'ble Supreme Court in the Case of Vikas Pratap Singh and others vs. State of Chhatisgarh and others, 2013 (14) SCC 494. Paragraph-22 of Vikas Pratap Singh (supra) is extracted hereunder:-

"The pristine maxim of fraud et jus nunquam cohabitant (fraud and justice never dwell together) has never lost its temper over the centuries and it continues to dwell in spirit and body of service law jurisprudence. It is settled law that no legal right in respect of appointment to a said post vests in a candidate who has obtained the employment by fraud, mischief, misrepresentation or malafide. (See: District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram and another v. M. Tripura Sundari Devi, (1990) 3 SCC 655, P. Chengalvaraya Naidu v. Jagannath and others, (1994) 1 SCC 1 and Union of India and others v. M. Bhaskaran, 1995 Suppl. (4) SCC 100). It is also settled law that a person appointed erroneously on a post must not reap the benefits of wrongful appointment jeopardizing the interests of the meritorious and worthy candidates. However, in cases where a wrongful or irregular appointment is made without any mistake on the part of the appointee and upon discovery of such error or irregularity the appointee is terminated, this Court has taken a sympathetic view in the light of various factors including bonafide of the candidate in such appointment and length of service of the candidate after such appointment (See: Vinodan T. and Ors. v. University of Calicut and Ors., (2002) 4 SCC 726; State of U.P. v. Neeraj Awasthi and Ors. (2006) 1 SCC 667). "

17. Therefore, in view of facts of this case as noted above, viz. continuance of appellant-writ petitioner for considerable period of 7 years coupled with the fact that the respondent authority could not lay any foundation of fraud and manipulation practised by appellant-writ petitioner to secure the appointment and further error of judgement if any (in computing the correct age of the petitioner) was of the respondents, that aspect may have escaped the attention of the learned Single Judge. To the extent, an error on principle may have been caused in the order of the learned Single Judge, thus, the instant Special Appeal as well as Writ Petition deserve to be partly allowed. The order dated 08.05.2025 passed by Writ Court, which is impugned herein as well as the order dated 28.10.2023 passed by respondent no.3, Basic Shiksha Adhikari, Moradabad are set-aside."

Question of law

19. The moot question that arises for consideration before this Court, on the basis of the pleadings of parties, is whether a candidate whose name finds place in a select list can claim any indefeasible right to appointment after the expiry of one year, i.e., upon the exhaustion of the select list, in view of Rule 14(3) of the Rules, 1947.

20. Whether an administrative circular, though issued but subsequently withdrawn, can have any bearing, in view of the statutory mandate contained in the Rules, 1947, on crystallising any right to appointment merely on the basis of a candidate having been placed in the select list.

Statutory Rules

21. The recruitment, selection and appointment to Class III posts in the District Judgeship were earlier governed and regulated by the U.P. Subordinate Civil Courts Ministerial Establishment Rules, 1947 (for brevity, the “Rules, 1947”), which have subsequently been replaced by the Uttar Pradesh State District Court Service Rules, 2013. Although the Rules, 1947 have since been repealed and replaced by the Rules, 2013, they remain relevant for appreciating the controversy in question, as the recruitment and selection involved here pertains to the advertisement issued in the year 1993. Rule 14(3) of the Rules, 1947 deals with the life span of the select list, whereas Rule 10 prescribes the requirement of publication of an advertisement in a newspaper, with the stipulation that the newspaper in which the advertisement is published must have circulation in the locality.

22. The Allahabad High Court, on the administrative side, vide Circular Letter No. 25, dated 16.06.1964 issued directions to all the District Judgeships within the State of Uttar Pradesh, providing that the life of the select list for the purposes of recruitment would be one year and that the names of the candidates therein would stand automatically removed by virtue of Rule 14(3) of the Rules, 1947. The relevant portion of the Rules reads:

“Rule - 9. Method of Recruitment.

Early in each year, or as the circumstances may require each District Judge shall recruit as many candidates for his judgeship as are required for the vacancies likely to occur in the course of the year.

Rule - 10. Applications for recruitment.

Applications for recruitment shall be invited by the District Judge in Form A in Appendix I by advertising in the papers, circulating in the locality, the number of candidates to be recruited and the date of the examination. Every such application shall be put up be-fore the District Judge and its receipt acknowledged.

Rule - 14. Registration of Selected candidates.

- (1) *The names of candidates recruited in accordance with Rule 12 shall be entered in order of merit in a bound register in Form (B) prescribed in Appendix I and each entry shall be initialled and dated by the District Judge after he has inspected the original of attested copies of certificates. An entry shall be made in the remark column against the name of a candidate who has qualified himself as a stenographer under Rule 11.*

Note.—An official working in the regular line shall be deemed to have qualified himself as a stenographer if at any examination held under Rule 10 he is certified to possess a speed of 100 words per minute in shorthand and 35 words per minute in typewriting.

- (2) *The name of any candidate entered under sub-rule (1) may be re-moved for inefficiency or misconduct.*

(3) If any such candidate has not been given an appointment offered in strict order of seniority according to the list in the bound register prescribed under sub-rule (1) within one year from the date of his recruitment, his name shall be automatically removed from the register of recruited candidates and he must then take his chance with others for recruitment again in a subsequent year.

23. This Court, on the administrative side, issued Circular Letter No. 25 dated 16.04.1964, in conformity with Rule 14(3) of the Rules, 1947, providing that the life span of a select list would be one year. Subsequently, vide Circular Letter No. 66 dated 28.07.1994, the life of the select list for recruitment to Class III posts in the Ministerial Cadre under some misconception was extended from one year to three years, though not supported by statutory rules. It appears that the aforesaid position was subsequently clarified vide Circular Letter No. 77 dated 24.08.1994, wherein it was provided that the life span of the select list would be one year, stated to be in conformity with Rule 14(3) of the Rules, 1947. Circular Letter No. 77 dated 24.08.1994 was issued in the backdrop of the two Division Bench judgments rendered by this Court in

Special Appeal No. 235 of 1993 (connected with Special Appeals Nos. 233 and 263 of 1993) and Special Appeal No. 278 of 1993.

24. We notice that the advertisement was published in a Hindi newspaper styled as '*Gandeev*', which was probably an evening newspaper. We are of the view that the process of advertisement and selection undertaken by the judiciary must not only be transparent and fair but must also inspire the confidence of the public at large. The publication of the advertisement in a newspaper styled as '*Gandeev*' could hardly be said to have wide circulation. However, that is not the issue which falls for our consideration and, therefore, the same does not detain us any further.

Analysis/ Reasoning

25. The foundation of the judgment under challenge herein is the judgment rendered by the learned Single Judge in **Arvind Kumar Pandey** (*supra*) following **Adya Prasad Mishra** (*supra*). Thus, we are called upon to carefully examine the law declared and applied by the learned Single Judge in **Adya Prasad Mishra** (*supra*).

26. The learned Single Judge, despite taking note of the Division Bench judgment of this Court in **Subedar Singh**, failed to consider the principle laid down there and also the holding of the Division Bench, that the learned Single Judge in **Adya Prasad Mishra** had not applied the law correctly. Though the inquiry was limited to the right of regularization of ad hoc employees and not with regard to the select list being one in perpetuity, yet the select list was imbued with a perpetual life going against Rule 14(3) of the Rules, 1947. The said principle of law cannot be followed, and in the subsequent judgment in **Arvind Kumar Pandey**, as also the judgment under challenge, the select list ought not have been made operational in perpetuity, *de hors* the rules.

27. In such circumstances, judicial propriety demanded that the learned Single Judge, either in **Arvind Kumar Pandey** or in the judgment under scrutiny before us, ought not have placed reliance upon the dictum laid

down in **Adya Prasad Mishra**. The relevant portion of the judgment of the Division Bench in **Subedar Singh** (*supra*) reads:

“22.. In our view the benefit of regularization policy crystalized in statutory rules cannot be extended by judicial pronouncement, since its extension would amount to legislation, which does not fall within the function of the Court. We are, with respect, accordingly, of the view that the decision of Adya Prasad Mishra Vs. State of U.P., also did not lay down the law correctly.”

28. At this juncture, as we read Rule 14(3) of the Rules, 1947, it restricts the life of a select list to one year and does not permit even a fraction of a second beyond that period, as evident from the phrase “after the lapse of one year”. The names of the candidates are automatically removed from the register, and such candidates must compete with others in the subsequent year. Rule 14 (3) of the Rules, 1947, not only limits the life of the select list to one year but removes the name of the candidates automatically, permitting them to compete in coming years. Thus, the observation, particularly Direction No. 4 contained in the judgment in **Adya Prasad Mishra**, directly amounts to legislation by conferring an indefinite life upon the select list until it is exhausted; and, that too against future vacancies. Such a direction carried in **Adya Prasad Mishra** is contrary to the statutory rules, aforesaid. The analogy adopted by the learned Single Judge in **Adya Prasad Mishra** was followed by the learned Single Judge in **Arvind Kumar Pandey**, and the same forms the foundation of the judgment under scrutiny before us.

29. In **Arvind Kumar Pandey**, it has been observed that the select list which was the subject matter of consideration there was the same select list which was the subject matter of **Adya Prasad Mishra**. However, **Adya Prasad Mishra** was instituted in the year 1990 and decided on 24.03.1994, whereas the select list in the instant case was prepared on 18.06.1994, to wit, after the decision in **Adya Prasad Mishra**. Thus, the learned Single Judge in **Arvind Kumar Pandey** as well as in the present case, erred in treating the select list dated 18.06.1994, where the petitioner's name finds place, as one and the same as that which was up for consideration in **Adya Prasad Mishra**. The aforesaid distinguishing facts make it clear that the judgment in **Adya Prasad Mishra** is wholly inapplicable to the controversy

in question, as the select list in the present case was prepared on 18.06.1994, i.e., after the decision in **Adya Prasad Mishra** on 24.03.1994.

30. The observation made by the learned Single Judge, either in **Adya Prasad Mishra**, **Arvind Kumar Pandey**, or in any other similar case, that appointments are to be made from amongst the selectees until the select list is exhausted, irrespective of the time factor, is directly contrary to the statutory rules, particularly Rule 14(3) of the Rules, 1947.

31. We notice that the learned Single Judge, in **Arvind Kumar Pandey**, which forms the foundation of the judgment under scrutiny before us, extended the benefit of Direction No. 4 issued in **Adya Prasad Mishra**. However, we find that the direction contained in **Adya Prasad Mishra** is in the teeth of the statutory Rules, particularly Rule 14(3) of the Rules, 1947. Thus, we find that the reasoning and view expressed by the learned Single Judge are palpably erroneous.

32. The learned Single Judge has noticed that, out of the 51 posts advertised, most of the posts were consumed in regularising the ad hoc appointees, who had also been permitted to participate in the selection process. Thus, no fault can be attributed to respondent No. 1 for being unable to secure appointment against the existing vacancies.

33. It is fairly well settled that a selectee does not have an indefeasible right to appointment and cannot claim appointment as a matter of right unless it is shown that the appointing authority has acted arbitrarily or practiced discrimination hostile.

34. In **Shankarsan Dash v. Union of India**, (1991) 3 SCC 47, a Constitution Bench held that a candidate seeking appointment to a civil post cannot be regarded to have acquired an indefeasible right to appointment to such post merely because of the appearance of his name in the merit list. The Supreme Court in **Shankarsan Dash** held:

“7. It is not correct to say that if a number of vacancies are notified for appointment and adequate number of candidates are found fit, the successful candidates acquire an indefeasible right to be appointed which cannot be legitimately denied. Ordinarily the notification merely amounts to an invitation to qualified candidates to apply for recruitment and on their selection they do not acquire any right to the post. Unless the relevant recruitment rules so indicate, the State is under no legal duty to fill up all or any of the vacancies. However, it does not mean that the State has the licence of acting in an arbitrary manner. The decision not to fill up the vacancies has to be taken bona fide for appropriate reasons. And if the vacancies or any of them are filled up, the State is bound to respect the comparative merit of the candidates, as reflected at the recruitment test, and no discrimination can be permitted. This correct position has been consistently followed by this Court, and we do not find any discordant note in the decisions in the State of Haryana v. Subhash Chander Marwaha [(1974) 3 SCC 220 : 1973 SCC (L&S) 488 : (1974) 1 SCR 165] ; Neelima Shangla (Miss) v. State of Haryana [(1986) 4 SCC 268 : 1986 SCC (L&S) 759] or Jitender Kumar v. State of Punjab [(1985) 1 SCC 122 : 1985 SCC (L&S) 174 : (1985) 1 SCR 899].”

35. This principle has subsequently been reiterated in **State of U.P. v. Rajkumar Sharma, (2006) 3 SCC 330**, the relevant remarks wherein are reproduced hereinbelow.

“Selectees cannot claim the appointment as a matter of right. Mere inclusion of candidates' name in the list does not confer any right to be selected, even if some of the vacancies remained unfilled and the concerned candidates cannot claim that they have been given a hostile discrimination.”

36. The learned Single Judge erred in construing Direction No. 4 in **Adya Prasad Mishra**, which despite being altogether different, was understood to mean that the select list was issued to protect the interest of all those candidates who could not be appointed against the existing vacancies on account of preference being given to the ad hoc appointees, and that, consequently, the life of the select list stood conclusively extended for an indefinite period until all the selectees were appointed, which is directly in the teeth of Rule 14 (3) of the Rules, 1947.

37. The learned Single Judge has erroneously held that the decision rendered in **Adya Prasad Mishra**, conferring an indefinite life upon the select list contrary to the statutory rules, particularly Rule 14(3) of the Rules, 1947, would continue to remain effective and not rendered nugatory merely on the ground that, subsequently, the Full Bench of this

Court has held that the life of a select list is limited to a period of one year.

38. The learned Single Judge erroneously held that the law declared by the Full Bench in **Devendra Nath Srivastava** (*supra*) declaring the life of select list as one year in interpretation of Rule 14(3) of the Rules, 1947 would operate prospectively, as it is fairly settled that the declaration made by a Constitutional Court is generally retrospective in character, that is, it operates from the date on which the Rule or the Act was brought onto the statute book.

39. It is also not that it would be invalid *inter partes* and alive elsewhere between a different set of parties. These principles are well settled, but we have the authoritative pronouncement of very recent times in **Central Bureau of Investigation v. R.R. Kishore**, (2023) 15 SCC 339, where a Constitution Bench of the Supreme Court went into the question and held:

“58. The question for determination is whether declaration of any law as unconstitutional by a constitutional court would have retrospective effect or would apply prospectively.

59. Much emphasis has been laid on the interpretation of the word “void” used in Article 13(2) of the Constitution. The same word “void” is used in Article 13(1) of the Constitution also. The judgments relied upon by the parties which will be shortly discussed hereinafter relate to the interpretation of the said word “void” by various Constitution Benches and a seven-Judge Bench [Keshavan Madhava Menon v. State of Bombay, 1951 SCC 16 : 1951 SCR 228] and other regular Benches. In Oxford Dictionary, the word “void” is defined to mean something is not legally valid or binding, when used as an adjective and further when used as a verb, it means to declare that something is not valid or legally binding.

61. Under Article 13(1) all existing laws prior to the commencement of the Constitution, insofar as they are inconsistent with the provisions of Part III, would be void to the extent of inconsistency. Further, according to Article 13(2), the State is prohibited from making any law which takes away or abridges the rights conferred by Part III and further that any law made in contravention of this clause would be void to the extent of contravention. Article 13(2) prohibits making of any law so it would be relating to laws made post commencement of the Constitution, like the case at hand. In the present case, as it has been held that Section 6-A of the DSPE Act is violative of Article 14 of Part III of the Constitution, as such, the same would be void. The word “void” has been interpreted in a number of judgments of this Court

beginning 1951 till recently and it has been given different nomenclature such as “non est”, “void ab initio” “stillborn” and “unenforceable”.

62. A brief reference to the case law on the point would be necessary at this stage. It may be worthwhile to mention that the earlier seven-Judge Bench [Keshavan Madhava Menon v. State of Bombay, 1951 SCC 16 : 1951 SCR 228] and Constitution Bench judgments relate to Article 13(1) of the Constitution, dealing with pre-existing laws at the time of commencement of the Constitution. There are later judgments relating to Article 13(2) of the Constitution. However, reliance is placed upon the judgments on Article 13(1) while interpreting the word “void” used in Article 13(2). 66. In Behram Khurshid Pesikaka (III) [Behram Khurshid Pesikaka (III) v. State of Bombay, (1954) 2 SCC 278], a seven-Judge Bench of this Court was considering the legal effect of the declaration made in State of Bombay v. F.N. Balsara [State of Bombay v. F.N. Balsara, 1951 SCC 860 : 1951 SCR 682], whereby part of Section 13 clause (b) of the Bombay Prohibition Act (Act 25 of 1949) was declared unconstitutional. It was held [Behram Khurshid Pesikaka (III) v. State of Bombay, (1954) 2 SCC 278] by the majority opinion that declaration of such provision as invalid and unconstitutional will only mean that it is inoperative and ineffective and thus unenforceable.

68. The challenge in Deep Chand [Deep Chand v. State of U.P., 1959 SCC OnLine SC 12 : 1959 Supp (2) SCR 8 : AIR 1959 SC 648] was with respect to the validity of the Uttar Pradesh Transport Service (Development) Act, 1955. The Constitution Bench, after discussing merit of Article 13(2) of the Constitution, was of the firm view that a plain reading of the clause indicates, without any reasonable doubt, that the prohibition goes to the root of the matter and limits the State's power to make law; the law made in spite of the prohibition is a stillborn law. The relevant extract which is part of para 13 (from the AIR reference), is reproduced hereunder : (SCC OnLine SC para 12)

“12. ... A legislature, therefore, has no power to make any law in derogation of the injunction contained in Article 13. Article 13(1) deals with laws in force in the territory of India before the commencement of the Constitution and such laws insofar as they are inconsistent with the provisions of Part III shall, to the extent of such inconsistency be void. The clause, therefore, recognises the validity of the pre-Constitution laws and only declares that the said laws would be void thereafter to the extent of their inconsistency with Part III; whereas clause (2) of that Article imposes a prohibition on the State making laws taking away or abridging the rights conferred by Part III and declares that laws made in contravention of this clause shall, to the extent of the contravention, be void. There is a clear distinction between the two clauses. Under clause (1), a preConstitution law subsists except to the extent of its inconsistency with the provisions of Part III; whereas, no post-Constitution law can be made contravening the provisions of Part III, and therefore the law, to that extent, though made, is a nullity from its inception. If this clear distinction is borne in mind, much of the cloud raised is dispelled. When clause (2) of Article 13 says in clear and unambiguous terms that no State shall make any law which takes away or abridges the rights conferred by Part III, it will not avail the State to contend either that the clause does not embody a curtailment of the power to legislate or that it imposes only a check but not a prohibition. A constitutional prohibition against a State making certain laws cannot be whittled down by analogy or by drawing inspiration from decisions on the provisions of other Constitutions; nor can we appreciate the argument that the words “any law” in the second line of

Article 13(2) posits the survival of the law made in the teeth of such prohibition. It is said that a law can come into existence only when it is made and therefore any law made in contravention of that clause presupposes that the law made is not a nullity. This argument may be subtle but is not sound. The words “any law” in that clause can only mean an Act passed or made factually, notwithstanding the prohibition. The result of such contravention is stated in that clause. A plain reading of the clause indicates, without any reasonable doubt, that the prohibition goes to the root of the matter and limits the State's power to make law; the law made in spite of the prohibition is a stillborn law.” (emphasis supplied)

70. In *Surjakumar Okram* case [*State of Manipur v. Surjakumar Okram*, (2022) 19 SCC 723], recently a three-Judge Bench of this Court, was dealing with an appeal against the judgment [*Surjakumar Okram v. State of Manipur*, 2020 SCC OnLine Mani 227] of the Manipur High Court which had declared the Manipur Parliamentary Secretary (Appointment, Salary and Allowances and Miscellaneous Provisions) Act, 2012 (Manipur Act 10 of 2012) as also the Repealing Act, 2018, as unconstitutional. L. Nageswara Rao, J. speaking for the Bench, observed that where a statute is adjudged to be unconstitutional, it is as if it had never been and any law held to be unconstitutional for whatever reason, whether due to lack of legislative competence or in violation of fundamental rights, would be void ab initio. SCC paras 27 to 29 of the said judgment [*State of Manipur v. Surjakumar Okram*, (2022) 19 SCC 723] are reproduced hereunder:

“27. Where a statute is adjudged to be unconstitutional, it is as if it had never been. Rights cannot be built up under it; contracts which depend upon it for their consideration are void; it constitutes a protection to no one who has acted under it and no one can be punished for having refused obedience to it before the decision was made [Cooley on Constitutional Limitations, Vol. I, p. 382.] . Field, J. in Norton v. Shelby County, State of Tennessee [Norton v. Shelby County, State of Tennessee, 1886 SCC OnLine US SC 194 : 30 L Ed 178 : 118 US 425 (1886)], observed that : (Norton case [Norton v. Shelby County, State of Tennessee, 1886 SCC OnLine US SC 194 : 30 L Ed 178 : 118 US 425 (1886)], SCC OnLine US SC para 13)

‘13. ... An unconstitutional act is not a law; it confers no rights, it imposes no duties; it affords no protection; it creates no office; it is, in legal contemplation, as inoperative as though it had never been passed.’

28. An unconstitutional law, be it either due to lack of legislative competence or in violation of fundamental rights guaranteed under Part III of the Constitution of India, is void ab initio. In *Behram Khurshid Pesikaka v. State of Bombay* [*Behram Khurshid Pesikaka v. State of Bombay*, (1954) 1 SCC 240 : (1955) 1 SCR 613], it was held by a Constitution Bench of this Court that the lawmaking power of the State is restricted by a written fundamental law and any law enacted and opposed to the fundamental law is in excess of the legislative authority and is thus, a nullity. A declaration of unconstitutionality brought about by lack of legislative power as well as a declaration of unconstitutionality brought about by reason of abridgment of fundamental rights goes to the root of the power itself, making the law void in its inception.

29. This Court in *Deep Chand v. State of U.P.* [*Deep Chand v. State of U.P.*, 1959 SCC OnLine SC 12 : 1959 Supp (2) SCR 8 : AIR 1959 SC 648] summarised the following propositions : (SCC OnLine SC para 25)

‘25. ... (i) whether the Constitution affirmatively confers power on the legislature to make laws subject-wise or negatively prohibits it from infringing any fundamental right, they represent only two aspects of want of legislative power;

(ii) the Constitution in express terms makes the power of a legislature to make laws in regard to the entries in the Lists of the Seventh Schedule subject to the other provisions of the Constitution and thereby circumscribes or reduces the said power by the limitations laid down in Part III of the Constitution;

(iii) it follows from the premises that a law made in derogation or in excess of that power would be ab initio void ...’”

(emphasis supplied)

71. Further in *Surjakumar Okram case* [*State of Manipur v. Surjakumar Okram*, (2022) 19 SCC 723] after discussing the law laid down by the previous pronouncements, the principles were deduced in para 39 to state that a statute declared unconstitutional by a court of law would be stillborn and non est for all purposes. SCC para 39 of the Report is reproduced hereunder : (*Surjakumar Okram case* [*State of Manipur v. Surjakumar Okram*, (2022) 19 SCC 723])

“39. The principles that can be deduced from the law laid down by this Court, as referred to above, are:

39.1. A statute which is made by a competent legislature is valid till it is declared unconstitutional by a court of law.

39.2. After declaration of a statute as unconstitutional by a court of law, it is non est for all purposes.

39.3. In declaration of the law, the doctrine of prospective overruling can be applied by this Court to save past transactions under earlier decisions superseded or statutes held unconstitutional.

39.4. Relief can be moulded by this Court in exercise of its power under Article 142 of the Constitution, notwithstanding the declaration of a statute as unconstitutional.”

(emphasis supplied)

40. This Court, in **Sachindra Kumar Pandey v. Gorakhpur Kshetriya Gramin Bank**, 2026 SCC OnLine All 25953 authored by one of us (J.J. Munir. J.) has held that once the Court declares the true meaning and effect of a statutory provision, such declaration relates back to the date on which the provision came into force.

41. The main thrust of the argument advanced by the respondents is that the Full Bench decision in **Devendra Nath Srivastava** would not

apply. We are, however, not impressed by the said submission, as a Full Bench or Constitution Bench only declares the law and thereby recognises the law as contained in the statute book. Such law would, therefore, remain operative from its inception. Consequently, Rule 14(3) of the Rules, 1947, which limits the life of a select list to one year, would be effective and operative from the date it was brought on the statute book. Upon realising that the Full Bench decision interpreting Rule 14(3) of the Rules, 1947, would bring the life of the select list to an end after one year, learned counsel for the respondents shifted his argument by submitting that the principle of *res judicata* would operate insofar as the dictum laid down in **Adya Prasad Mishra** (*supra*) is sought to be given effect to.

42. We are at a complete loss to understand the argument advanced by learned counsel for the respondents, as, for the principle of *res judicata* to apply to any proceedings, the following ingredients are required to be satisfied:

- (i) the issue must be the same;
- (ii) the issue must have been decided by a judicial order; and
- (iii) the parties to the lis must be the same.

43. The principle of *res judicata* is founded upon the requirement that a matter which has already been directly and substantially adjudicated between the parties by a competent Court should not be permitted to be re-agitated in subsequent proceedings. The Supreme Court, in **Sheodan Singh v. Daryao Kunwar**, AIR 1966 SC 1332, after examining Section 11 of the Code of Civil Procedure, has lucidly laid down the conditions necessary for constituting a matter as *res judicata*. The Court held:

“A plain reading of s. 11 shows that to constitute a matter res judicata, the following conditions must be satisfied, namely—

(i) The matter directly and substantially in issue in the subsequent suit or issue must be the same matter which was directly and substantially in issue in the former suit;

(ii) The former suit must have been a suit between the same parties or between parties under whom they or any of them claim;

(iii) The parties must have litigated under the same title in the former suit;

(iv) The court which decided the former suit must be a court competent to try the subsequent suit or the suit in which such issue is subsequently raised; and

(v) The matter directly and substantially in issue in the subsequent suit must have been heard and finally decided by the court in the first suit.”

44. The aforesaid principles have subsequently been reiterated by the Supreme Court in **Canara Bank v. N.G. Subbaraya Setty**, (2018) 16 SCC 228, wherein this Court, while referring to **Sheodan Singh** (*supra*), again emphasised that the matter directly and substantially in issue must be the same, the former proceeding must have been between the same parties or parties claiming under them, the parties must have litigated under the same title, and the matter must have been heard and finally decided by a competent Court.

45. The learned Single Judge erred in law in invoking and applying the principle of *res judicata* for extending the life of the select list based upon the directions made in **Adya Prasad Mishra** (*supra*), as neither respondent No. 1 was a party to the said proceedings, nor the select list involved there was the same select list of which respondent No. 1 seeks to derive benefit.

46. In the present case, we find that respondent No. 1, Anand Kumar Verma, was not a party to **Adya Prasad Mishra** (*supra*) and **Manoj Kumar Srivastava** (*supra*). Thus, any decision rendered in aforesaid cases would not operate as *res judicata* so as to confer any benefit upon respondent No. 1.

47. We further find that the learned Single Judge has placed reliance upon the judgment and order dated 30.11.1995 rendered in **Manoj Kumar Srivastava**, whereby the life of the select list was extended to three years and the decision of the District Judge dated 18.10.1995, treating the select list as having become inoperative after one year, was set aside, extending the life of the select list to three years i.e. upto 18.06.1997 but the respondent-writ petitioner instituted the writ petition on 18.11.1997.

Going by the direction contained in **Manoj Kumar Srivastava**, the select list could have remained operative only up to 18.06.1997. Thus, on 18.11.1997, when the writ petition was instituted, the select list had already ceased to be operative and was no longer in existence.

48. The writ petitioner did not approach this Court during subsistence of the select list for one year, i.e., 18.06.1995, as per rules, when the select list was alive for one year by operation of rule 14(3) of 1947 Rules, and also did not institute writ proceedings before 18.06.1997 i.e., three years of life of the select list as provided by the judgment in **Manoj Kumar Srivastava**. Thus, writ petitioner was a complete fence-sitter, and the remedy dies for such persons, as observed by the Supreme Court. (See: **T. Gnanavel vs. R. Sasipriya and others, Shiba Shankar Mohapatra and others vs. State of Orissa and others**, (2010) 12 SCC 471)

49. Since the select list had exhausted by operation of law, the same was no longer available for making any appointment. So far as the authorities relied upon by learned counsel for the respondent are concerned, in all those cases, the fault was attributable to the employer, and the long continuance of the employees in service was the result of the employer's inaction or ignorance. Accordingly, the employees' long continuance in service was protected, as the employer was not permitted to reap the benefits of its own illegal or wrongful action by attaching any premium to the same.

50. In our considered opinion, none of the judgments relied upon by Mr. Khare come to the rescue of the respondent-writ petitioner, as, in the case at hand, the select list itself had lost its efficacy and ceased to operate upon the expiry of one year by operation of law, i.e., Rule 14(3) of the Rules, 1947. Thus, any command for appointment in our writ jurisdiction would be in teeth of the Rules, 1947.

51. However, in the case at hand, the employer, i.e., the District Judge, Varanasi, cannot be held to be at fault in any manner. Within the

prescribed period, the District Judge, Varanasi, vide order dated 18.10.1995, made the select list inoperative by following the statutory mandate contained in Rule 14(3) of the Rules, 1947. Any direction requiring the District Judge, Varanasi, to act contrary to the statutory Rules was, therefore, wholly unwarranted. The District Judge, Varanasi, thus has every right to institute this Special Appeal and assail the direction issued by the learned Single Judge.

52. In sum and substance, what this Court finds is that the employer, in this case, cannot be held to be at fault, though it is equally correct that the respondent-writ petitioner has not indulged in any malpractice, misrepresentation or fraud. The interpretation of the Rules has led to a series of litigations and rendered the factual backdrop of the instant case rather chequered. However, we cannot subscribe to any direction issued by the learned Single Judge which is contrary to law, as it is a settled principle that equity follows the law, and the converse is not true.

53. The learned single judge erred in observing that the appointment can be made against future vacancies from the select list, as any such endeavour would directly defeat the rights *in rem* in relation to public employment and would be directly in teeth of constitutional mandate contained under Articles 14 and 16 of the Constitution. No appointment or recruitment against future vacancies is permissible under the law. In this regard, we are benefited by a Bench decision of this court in **Adam Malik Khan and others vs Aligarh Muslim University and others, 1997 (1) LLN.160 (Civil Misc. Writ Petition No. 38618 of 1994)** decided on 04.9.1996 which lays down that the selection of a candidate for appointment against future vacancies which have not been notified will be violative of Article 14 of the Constitution of India. In **Adam Malik Khan (supra)**, R.A. Sharma, J, speaking for Division Bench held:

“The contention of the learned counsel for the University, however, is that statute 29(2)(a) does not require the advertisement of vacancy and what is required is the advertisement of post. Accordingly it has been submitted that the candidates can be selected by the selection committee even if there is no vacancy. This contention cannot be accepted. The appointment can be made

against a vacant post. Therefore, unless the post is vacant, it cannot be advertised. Consequently no selection for a post, which has not been advertised, can be made by the selection committee. Selection of a candidate for appointment in future in a post, which has not been notified will also be violative of Art. 14 of the Constitution, as held by the Hon'ble Supreme Court in the cases referred to hereinbefore."

54. The judgment of this Court in **Adam Malik Khan** (*supra*) has been affirmed by the Supreme Court in **Dr. Abdul Hameed Fazli and another v. Adam Malik Khan and others**, (1996) 11 SCC 423, The relevant observations of their Lordships read:

"6. A reading of Section 29 would indicate that all appointments to permanent posts of teachers in the University shall be made by the Executive Council on the recommendation of the Selection Committee in accordance with the provisions of the statute. Such posts shall be duly advertised and the candidates concerned would have an opportunity of being interviewed by the Selection Committee except in cases where such Committee decides to consider the case of a candidate otherwise than by an interview. The object thereby is that all the permanent vacancies should be filled up by advertisement giving opportunity to all eligible persons to claim for selection by the Selection Committee in regular process. This Court in Ashok Kumar v. Chairman, Banking Service Recruitment Board [(1996) 1 SCC 283 : 1996 SCC (L&S) 298 : (1996) 32 ATC 235] laid down as under: (SCC pp. 284-285, para 15)

"Article 14 read with Article 16(1) of the Constitution enshrines fundamental right to every citizen to claim consideration for appointment to a post under the State. Therefore, vacant post arising or expected should be notified inviting applications from all eligible candidates to be considered for their selection in accordance with their merit. The recruitment of the candidates in excess of the notified vacancies is a denial and deprivation of the constitutional right under Article 14 read with Article 16(1) of the Constitution. The procedure adopted, therefore, in appointing the persons kept in the waiting list by the respective Boards, though the vacancies had arisen subsequently without being notified for recruitment, is unconstitutional. However, since the appointments have already been made and none was impleaded, we are not inclined to interfere with these matters adversely affecting their appointments. However, hereafter the respective Boards should notify the existing and expected vacancies and the Recruitment Board should get advertisement published and recruitment should strictly be made by the respective Boards in accordance with the procedure to the notified vacancies but not to any vacancies that may arise during the process of selection."

55. We are unable to countenance the appointment of respondent no.1 being against the statutory rules as well as the constitutional scheme, particularly Article 14 and 16 of the Constitution of India. In our considered opinion, the difference between an illegal appointment and

irregular one can well be elucidated without there being any margin of overlap:

Illegal appointment: These are appointments made in violation of law from the outset, i.e., from the inception they are created, rendering them null and void ab initio. Such appointments contravene constitutional provisions, particularly Article 14 and 16 as they mandates equality before the law from the outset and non-discrimination/equal opportunity in public employment whereas illegal appointments are made in flagrant violation of the statutory recruitment rules, regularization rules or the service rules as the case may be.

Irregural Appointment: These involve procedural lapses or noncompliance with certain recruitment norms. However, they do not vitiate the fundamental legality of the appointment and can be regularised if remedial measures are taken to align with statutory requirements. Unlike illegal appointments, irregular ones do not challenge the fundamental legality of things and can be corrected.

56. In public employment principles of equality, transparency, and fairness must transcend the action of the employer. This not only deters arbitrary and favoritism practices but also upholds the integrity of the administrative machinery, ensuring that public service remains a realm of merit and equality.

57. The Supreme Court, in **P.M. Latha v. State of Kerala, (2003) 3 SCC 541**, has categorically held that “equity and law are twin brothers” and that equity cannot override written or settled law. The relevant observations in **P.M. Latha (supra)** read:

“13. Equity and law are twin brothers and law should be applied and interpreted equitably but equity cannot override written or settled law. The Division Bench forgot that in extending relief on equity to BEd candidates who were unqualified and yet allowed to compete and seek appointments contrary to the terms of the advertisement, it is not redressing the injustice caused to the appellants who were TTC candidates and would have secured a better position in the rank list to get appointment against the available

vacancies, had BEd candidates been excluded from the selections. The impugned judgment of the Division Bench is both illegal, inequitable and patently unjust. The TTC candidates before us as appellants have been wrongly deprived of due chance of selection and appointment. The impugned judgment of the Division Bench, therefore, deserves to be set aside and of the learned Single Judge restored.”

58. With respect to an illegal appointment from its inception, in **Hemant Kumar vs. State of Haryana, 2026 INSC 878 (SC)**, the Supreme Court has held:

“Illegality means something which is contrary to law; something which is wrong right from the inception. It is void ab initio. Illegality cannot be cured and made legal and valid by lapse of time. Illegality, which is distinct and different from irregularity, cannot be regularized by taking a sympathetic view on the ground of long continuance in service. This position has been explained by a Constitution Bench of this Court in Uma Devi. If the appointment itself is in infraction of the rules, in this case the 1965 Rules, it is an illegality. Such an illegality cannot be cured by resorting to the novel method of absorption which has been explained as appointment by transfer.”

59. We have been taken through the authority of the Supreme Court in **Jomon K.K. v. Shajimon P. and Others, 2025 SCC OnLine SC 711**, particularly paragraphs 36 and 38 thereof, which read:

“38. This Court in Ashok Kumar Sonkar v. Union of India²⁰ held that if an appointment is illegal, it is non-est in the eye of law and rendering the appointment a nullity and principles of equity in a case of such nature would have no role to play; also that, sympathy should not be misplaced.”

60. It is fairly well settled that no direction can be issued in disregard of the statutory Rules. In this case, directing the appellant to treat the select list as operative even after the expiry of one year, and, that too, in perpetuity, would be directly in the teeth of Rule 14(3) of the Rules, 1947.

61. The premise of the judgment rendered in **Arvind Kumar Pandey**, which forms the foundation of the judgment under scrutiny before us, namely, that “the petitioner and other selectees shall continue to be appointed as and when vacancies arise till the select list is exhausted”, and that the said direction was not in any manner whittled down by the decision of the Full Bench in **Devendra Nath Srivastava**, is wholly erroneous and directly contrary not only to the statutory Rules but also to the law declared by the Full Bench of this Court, as well as the judgment

of the Supreme Court in the case of **Central Bureau of Investigation v. R.R. Kishore, (2023) 15 SCC 339**, that a judicial declaration determines the legal position and, in the absence of a specific prospective limitation, does not ordinarily create a new law from the date of the judgment.

62. The respondent herein has served for more than 14 years and is now at the fag end of his service career. He has devoted a substantial part of his career to service of the Judgeship and is nearing the age of superannuation. Since the respondent-writ petitioner has rendered nearly 14 years of service and devoted almost his entire career and life to the service, the salary and emoluments already paid to him shall not be recovered by the respondents.

63. In terms of the reasons set out hereinabove, an error of law on principle has been committed by the learned Single Judge. Therefore, the order passed by the learned Single Judge is unsustainable in the eyes of law. Accordingly, the order under challenge dated 02.03.2012 is hereby set aside and the writ petition stands **dismissed**.

64. In view of the aforesaid, the appeal stands allowed.

65. No order as to costs.

(Indrajeet Shukla,J.) (J.J. Munir,J.)

October 5, 2026

S.P.

Whether the order is speaking :Yes
Whether the order is reportable:Yes