Reserved On :- 18.06.2021
Delivered on 14.07.2021

AFR

Court No. - 9

Case :- SPECIAL APPEAL No. - 296 of 2020
Appellant :- Ashutosh Kumar Upadhyay & Others
Respondent :- Vijay Kishore Anand & Others
Counsel for Appellant :- Shobhit Mohan Shukla,Surya Narain Mishra
Counsel for Respondent :- Gaurav Mehrotra
along with
Case :- SPECIAL APPEAL No. - 302 of 2020

Appellant :- Ramesh Chandra & Others
Respondent :- State Of U.P. Thru. Prin. Secy. Transport Dept. Lko. & Ors**.**
Counsel for Appellant :- Ram Nath Pandey,Dipesh Dwivedi,Shree Shashank Tripathi
Counsel for Respondent :- C.S.C.
along with
Case :- SPECIAL APPEAL No. - 303 of 2020

Appellant :- Mahesh Kumar Verma & Anr.
Respondent :- Vijay Kishore Anand & Ors.
Counsel for Appellant :- Apoorva Tewari,Prashast Puri
Counsel for Respondent :- C.S.C.,Gaurav Mehrotra,Hemant Kumar Mishra,Rajeiu Kumar Tripathi,Surya Narayan Mishra

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Hon'ble Ramesh Sinha,J.
Hon'ble Jaspreet Singh,J.

Introduction:-

1. This is a batch of three intracourt appeals, preferred under Chapter VIII, Rule 5 of the Allahabad High Court Rules, 1952, calling in question the judgment and order dated 20.10.2020 passed by the learned Single Judge in W.P. No. 12438 (SS) of 2019 (Vijay Kishor Anand and Others Vs. State of U.P. and Others).

2. Since all the three intracourt appeals, challenge the same judgment dated 20.10.2020 and the issues both of facts and law raised herein are also common, hence, all the three appeals are being decided by this common judgment.

3. The appellants in all the three appeals were the private respondents before the Writ Court and were working as Passenger Tax/Goods Tax

Superitendent (hereinafter referred to as "The P.T.G.T.S."), and their posts under the Uttar Pradesh Transportation Taxation (Subordinate Service Rules), 1980 (hereinafter referred to as the "Rules of 1980") have been upgraded and merged with the post of Passenger Tax/Goods Tax Officers (P.T.G.T.O.) by means of a Government Order dated 03.05.2011.

4. The writ petitioners, who are the private respondents in these appeals, are the persons who were directly recruited to the post of Passenger Tax, Goods Tax Officer, after due selection from the Uttar Pradesh Public Service Commission and were inducted in service in the year 2013.

5. The tussle between the appellants and the respondents is in respect of their seniority. The learned Single Judge by means of the impugned judgment dated 20.10.2020 taking note of the Division Bench decision of this Court dated 13.04.2017 passed in W.P. No. 1802 (SB) of 2015 along with the effect of the Uttar Pradesh Transportation Taxation (Subordinate Service Rules, (1st Amendment) Rules, 2018 (hereinafter referred to as the 1st Amendment Rules of 2018) as well as the effect of the seniority list dated 17.11.2017 and noting the rival submissions, did not accept the version of the appellants herein and set aside the order dated 15.04.2019 passed by the Transport Commissioner and also set aside the seniority list circulated by the Transport Commissioner of the same date i.e. 15.04.2019 and affirmed the seniority list dated 17.11.2017 as a consequence the respondents are poised to be placed above the apppellants in the seniority list.

Factual matrix:-

6. In order to appreciate the cotroversy involved, the facts giving rise to these appeals is being noticed first. There has been several rounds of litigations, between the two class, one, i.e. the appellants belonging to the Class of Passenger Tax/Goods Tax Superintendants (P.T.G.T.S) and only by

Govt. Order dated 03.05.2011 their post was merged with P.T.G.T.O. and the respondents belong to other class, who are the persons directly appointed as Passenger/Tax Goods Tax Officers (PTGTO), which shall be noticed in the subsequent paragraphs herein.

7. Admittedly, the Service Rules of 1980 which were applicable to the parties contemplated 3 class of posts, comprising the cadre of service, ***(i)*** P.T.G.T.O. ***(ii)*** Tax Superitendence & ***(iii)*** P.T.G.T.S.

The Rule 5 of the Service Rules of 1980 provides for source of recruitment which is being reproduced hereinafter for convenient perusal.

"***5. Source of recruitment--*** *Recruitment to the various categories of posts in the service shall be made from the following sources--*

(I) Passenger Tax, Goods-Tax Officer- (i) By direct recruitment through the Commission.
(ii) By promotion through the Commission from amongst--
(a) the permanent Tax Superintendent/Passenger Tax/Goods Tax Syperintendents who have put in at least five years of continuous service as such:
(b) the permanent Assistant Public Prosecutors who have put in at least five years of continous service as such; and
(c) the permanent Head Assistants, Head Clerks of the Transport Commissioner's Office, who have put in at least five years of continuous service as such:
Provided that as far as possible the recruitment shall be so arranged that 50 per cent posts in the cadre are held by direct recruits and rest by promotion as follows:-
(a) Tax Superintendent/Goods Tax, Superintendents/Passenger Tax Superintendents--40 per cent;
(b) Assistant Public Prosecutors-5 per cent.
(c) Head Assistant/Head Clerks in Transport Commissioner's Office-5 per cent.
(2) Tax Superintendents.- By promotion through the Commission from amongst the permanent passenger Tax/Goods Tax Superintendents.
(3) Passenger/Goods Tax Superintendents.-- (i) By direct recruitment through the Commission.
(ii) By promotion through the Commission from amonst:-
(a) the permanent Section in Charges Noter and Drafters and Stenographers of Transport Commissioner's Office who have put in at least five years of continuous service as such; and
(b) the permanent Head Clerks, Head Clerk-cum-Accountants and Stenographers in the Regional Transport Offices, who have put in at least five years of continuous service as such;
Provided that, as far as possible, the recruitment shall be so arranged that 50 per cent posts in the cadre are held by direct recruits, and rest by the promotion as follows:-
(a) Section in charge and Noter and Drafters -15 per cent.

(b) Stenographers in Transport Commissioner's Officer- 14 per cent
(c) Stenographers in Regional Offics-14 per cent."

8. Rule 5 indicates that the P.T.G.T.O. has two source of recruitment ***(i)*** by direct recruitment through the Commission; ***(ii)*** by promotion through the Commission amongst the Permanent Tax Superitendent/Passenger Tax/ Goods Tax Superitendents who have put in five years of continous service, and also from amongst Permanent Assistant Public Prosecutor who have put in five years of continous service, Permanent Head Assistants, Head Clerks of the Transport Commissioners Office also who have put in five years of continous service.

9. The appellants herein were working as P.T.G.T.S. The record would indicate that on 18.03.2011 recommendations were made by the Pay Committee (2008) in respect of the Transport Department. Amongst other recommendations inter alia, it also recommended that the posts of P.T.G.T.S. be merged with the posts of P.T.G.T.O. while fixing the cadre post strength to 120.

10. It was also recommended that all the posts of P.T.G.T.S. be upgraded as P.T.G.T.O. The combined strength would be 120 and as and when the posts of P.T.G.T.O. would fall vacant, the said persons would be adjusted against the said posts fixing the final strength at 120. By the same recommendations, the payscales of P.T.G.T.S. was also upgraded to be at par with that of P.T.G.T.O.

11. It is in furtherance of the aforesaid recommendations that the Government Order dated 03.05.2011 was issued. By the said Government Order dated 03.05.2011, the posts of P.T.G.T.S. were abolished and all such persons working on the said post were upgraded to P.T.G.T.O. The said Government Order also provided that the Service Rules would be amended

appropriately and that the Government Order dated 03.05.2011 shall take effect immediately.

12. The aforesaid Government Order dated 03.05.2011 was assailed by the Ministerial Service Association Transport Commissioner Office before a learned Single Judge of this Court in W.P. No. 2811 (S/S) of 2011 (Ministerial Service Association Transport Commissioner Office, Lucknow Vs. State of U.P. and Others).

The primary ground of challenge to the aforesaid Government Order dated 03.05.2011 was on the premise that the re-structuring of the cadre of P.T.G.T.O. has been done without amending in the Rules of 1980 and that the recommendations of the Pay Committee could not be implemented without a recommendation from the Government or the Transport Department and as such the abolition of the posts of P.T.G.T.S. has jeopardised the chance of promotion of the persons such as petitioners of the said writ petition.

Considering the submissions, an interim order, dated 27.05.2011, was passed in the said petition directing the parties to maintain status-quo as it existed on 27.05.2011. The relevant portion of the order dated 27.05.2011 is being noted hereinafter for convenient reference.

> *"Heard Sri S.K. Kalia, learned Sr. Advocate assisted by Sri Rajan Roy.*
> *Learned counsel for the petitioner submits that the impugned order dated 3.5.2011, restructuring the cadre of Passengers/Goods Tax Officer has been done without amendment in the relevant rules and even without any recommendation from the Government or Transport Department.*
> *Further submission is that the Pay Committee has no jurisdiction to make any such recommendation for restructuring of the cadre. The abolition of posts has jeopardized the chance of promotion of the petitioners.*
> *Dr. L.P. Misra appearing for the opposite party no. 5 submits that restructuring of the cadre can be done even without amendment in the rules. He further submits that the Pay Committee has made deliberation with the concerning department as well as the State Government and the committee has jurisdiction to make such recommendation.*

> *The learned Standing Counsel has to make submissions in this regard. The matter requires consideration.*
> *Put up on Monday i.e. 30.5.2011, as fresh.*
> *Till the next date of listing, status quo as is existing today shall be maintained by the parties."*

13. While the aforesaid writ peititon remained pending, selections for the year 2009 to the vacant posts of P.T.G.T.O. had been advertised through the U.P. Public Service Commission and after due selection, the respondents herein were selected, however, they could not join on account of the fact that the interim order dated 27.05.2011 was operating in W.P. No. 2811 (S/S) of 2011.

14. The State Government in order to accommodate the respodents herein made an application for modification/clarification of the order dated 27.05.2011 in W.P. No. 2811 (SS) of 2011 wherein this Court considering the facts and circumstances modified the interim order dated 27.05.2011 vide order dated 22.02.2013. The relevant portion of the aforesaid order reads as under:-

> *"In this view of the matter, the order dated 27.5.2011 is modified to the extent that 15 selected incumbents selected against 50% direct recruitment quota shall be allowed to join on the post in question, however, their selection/joining shall be subject to further orders passed in the writ petition.*
> *Subject to aforesaid modification, the order of status quo as directed earlier shall continue to operate."*

15. It is in this manner that the respondents herein came to be inducted in the service as P.T.G.T.O. and have been performing their duties since the year 2013 onwards.

16. On 04.12.2014, an eligibility list was prepared which was forwarded to the Public Service Commission, Uttar Pradesh in respect of those persons who were initially appointed as Assistant Regional Inspectors (Technical) and were upgraded and merged in the cadre of Regional Inspector (Technical) and also the employees who were appointed as P.T.G.T.S. who were upgraded and merged on the post of P.T.G.T.O.

17. Certain Goods/Passengers Tax Superintendent who were promoted on the post of Goods/Passengers Officers on 12.11.2009 along with the direct recruits on the post of P.T.G.T.O. who were appointed in the year 2010 preferred a W.P. bearing No.A-60158 of 2014 (Sri Narain Tripathi & others Vs. State of U.P. & another) before a coordinate Bench of this Court at Allahabad seeking forwarding of their names to the Public Service Commission for being considered for promotion on the post of Assistant Regional Transport Officers.

18. The said writ petition bearing Writ No. A- 60158 of 2014 was disposed of finally by means of judgment and order dated 09.12.2014 with a direction to the State Government to forward the list of P.T.G.T.O. for consideration for promotion on the post of Assistant Regional Transport Officers. It was also clarified that the list of Regional Inspectors (Technical) which had already been forwarded by the State Government to the Commission shall be considered by the Commission together with the list of Goods/Passengers Tax Officers which shall be forwarded by the State Government in pursuance of the order/judgment passed by this Court dated 09.12.2014. The relevant portion of the said order is being reproduced for convenient reference.

> *"We, therefore, direct that the State Government shall also forward the list of Passenger/Goods Tax Officers to the Commission for consideration of the names of the Passenger/Goods Tax Officers for promotion to the post of Assistant Regional Transport Officers. It is also made clear that the list of the Regional Inspectors (Technical) which has already been forwarded by the State Government to the Commission shall be considered by the Commission together with the list of Passenger/Goods Tax Officers which shall now be forwarded by the State Government to the Commission.*
> *The writ petition is allowed to the extent indicated above."*

19. Significantly, few of such similarly situated persons also preferred another Writ Petition claiming similar relief bearing W.P. No. A 2135 of 2015 which also came to be decided by means of judgment and order dated

21.01.2015 in terms of the judgment and order dated passed in W.P. No. A 60158 of 2014.

20. It is in this backdrop, it is asserted by the respondents, herein, having learned that the State Government without examining the relevant issue was sending the names of such persons claiming to have merged in the cadre of P.T.G.T.O. on the basis of the Government Order dated 03.05.2011, hence, the respondents herein preferred their objections. Since no heed was paid to the said objections, the respondents herein preferred W.P. No. 336 (S/B) of 2015 (Irshad Ali and Others Vs. State of U.P. and Others). During the course of hearing, it was informed to the respondents herein that the objections of the respondents had been rejected, hence, the respondents requested to not press the aforesaid writ petition with liberty to file afresh challenging the order of Transport Commissioner which was permitted by the Court by means of order dated 26.03.2015. The relevant portion of the order dated 26.03.2015 is being reproduced for convenient reference:-

> *"The petitioner has challenged the Government Order dated 3 May 2011, whereby the post of Passenger/Goods Tax Superintendent has been merged with the post of Passenger/Goods Tax Officer. However, at this stage learned counsel for the petitioner has submitted that the petitioners' had also made a representation to the Transport Commissioner for redressal of their grievance, which has been rejected. Therefore, they want to challenge the order passed by the Transport Commissioner by way of a fresh writ petition and thus he seeks permission to withdraw the writ petition with liberty to file a fresh writ petition.*
> *In view of circumstances stated above, we hereby accept the petitioners' request and dismiss the writ petition as not pressed with liberty to file a fresh writ petition."*

21. Significantly, the W.P. No. 21811 (S/S) of 2015 wherein the G.O. dated 03.05.2015 was also under challenge, the said writ petition was also dismissed as not pressed on 17.07.2011. The relevant portion of the order dated 17.07.2011 is being reproduced for convenent reference:-

> *"Sri Raj Kumar Upadhyaya, on the basis of the affidavit filed in support of the application for withdrawal of the petition, has submitted that part of the relief prayed for in this petition has already*

been given to the petitioners and the remaining is under consideration before appropriate authority, so the present petition may be dismissed as not pressed at this stage.
Learned Standing counsel has no objection to the aforesaid prayer.
In view of above, the application is allowed. The petition is dismissed as not pressed at this stage."

22. In the aforesaid backdrop, a tentative seniority list of P.T.G.T.O. was published on 13.08.2015 wherein the respondents herein were placed below the appellants and other such similarly situated persons who were initially appointed as P.T.G.T.S. and subsequently merged with the post of P.T.G.T.O. in pursuance of the Government Order dated 03.05.2011.

23. The respondents herein filed their detailed objections in respect of the tentative seniority list circulated on 13.08.2015, however, the same was rejected and the final seniority list dated 11.09.2015 was published wherein the respondents herein who were directly recruited to the post of P.T.G.T.O. were placed lower than the persons who had initially been appointed as P.T.G.T.S. and in pursuance of the Government Order dated 03.05.2011 and merged and upgraded to the higher post of P.T.G.T.O.

24. This final seniority list dated 11.09.2015 was challenged by the respondents herein in W.P. No. 1802 (S/B) of 2015 (Vijay Kishore Anand and Others Vs. State of U.P. & Others).

25. After the exchange of pleadings, and upon hearing, the said W.P. No. 1802 (S/B) of 2015 was allowed by means of judgment and order dated 13.04.2017. The relevant portion of the said judgment is being reproduced for ready reference:-

*"**.....10.** Regard being had to the aforesaid decision, it is established that till day the provisions of Government Order dated 3.5.2011 have not become part of Rules, 1980. Rule 5 of the Rules, 1980 deals with the source of recruitment. Under the Rules, Permanent Tax Superintendents and Permanent Goods Superintendents are the feeding cadre of Passenger Tax, Goods Tax Officers. The Government Order dated 3.5.2011 has put them at par*

with the Passenger Tax, Goods Tax Officer, which amounts to amendment in the Rules.
11. *The Government Order dated 3.5.2011 provides the provisions contrary to the Rules, therefore it cannot be said that by way of Government Order, the State Government has supplemented the Rules.*
12. *The State Government cannot be permitted to transgress the power of legislature by way of executive order.*
13. *Therefore, we are of the view that since the decision taken by the State Government for restructuring the post and placing the Passenger Tax Superintendent at per with the Tax Officer has not been inserted in the Rules, the private respondents, who are posted as Passenger Tax Officers, have no right to be placed in the seniority list of Passenger Tax and Goods Tax Officers amongst the petitioners.*
14. *In the result, the office order dated 11.9.2015 issued by the Transport Commissioner, State of U.P., is hereby quashed and a direction is issued to the State Government to prepare a seniority list of Passenger Tax, Goods Tax Officer afresh within two months from the date of communication of this order.*
15. *The writ petition stands allowed."*

26. What is significant to note is that by means of judgment dated 13.04.2017 the Coordinate Bench of this Court had set aside the seniority list dated 11.09.2015 issued by the Transport Commissioner and the directed the State Government to prepare a fresh seniority list of Passenger/Tax Goods Tax Officer afresh. While issuing such directions, the coordinate Bench also noticed that the decision taken by the State Government for re-structuring the post and placing the P.T.G.T.S. at par with the P.T.G.T.O. was contrary to the Rules and not permissible, thus. the respondents in the said writ petition (who are the appellants before this Court) have no right to be placed over the P.T.G.T.O. who are the the petitioners of the writ petition (and the respondents herein). Against the aforesaid decision, a Review Petition was preferred which also came to be dismissed by means of order dated 18.12.2017. The relevant portion of the said order dated 18.12.2017 is being reproduced for convenient reference.

"We have not been able to find any apparent error on the face of record and also we do not find any good reason to entertain the review application along with application for condonation of delay. Accordingly, both the aforesaid applications are hereby rejected. "

27. Thus, it would be seen that the judgment dated 13.04.2017 attained finality, inasmuch as, it was never assailed before the Apex Court.

28. Since the directions issued by the Division Bench of this Court was not being complied with, the respondents herein preferred a contempt petition bearing No. 1544 of 2017. By means of order dated 11.09.2017, 15.11.2017 and 16.11.2017, the Contempt Court finding that the order of the Division Bench was not being complied with in its letter and spirit, hence, in order dated 16.11.2017 it observed as under:-

> *"The government order dated 03.11.2011 being found in conflict with Rule 5 would nevertheless hold any field contrary to the statutory rules for the purposes of determining seniority of substantive members in service would be a serious misunderstanding of the judgment.*
> *The above observations made in the judgment lead to no other conclusion but to a clear picture of the fact that substantive members of service appointed as per Rule-5 of the Service Rules, 1980 on the post of Passenger Tax and Goods Tax Officers have to be included in the final seniority list at their respective places in an ascending order.*
> *The officer who is present in person has prayed that he may be permitted to carry out the mandate of law understood in the manner stated above within a further period of three days.*
> *Let the necessary exercise be completed and action apprised to this Court on the next date of listing."*

29. The Transport Commissioner taking note of the decision passed by a Division Bench as well the Contempt Court by means of order dated 17.11.2017 published a seniority list in respect of the present respondents. From the perusal of the said seniority list, it would indicate that 13 names were included. Amongst such 13 names persons at serial nos. 1 to 11 were such persons who had been directly recruited on the post of P.T.G.T.O. and the persons at serial Nos. 12 and 13 were the ones who had been promoted from the feeding cadre to the post of P.T.G.T.O. It will be relevant to note that the said seniority list dated 17.11.2017 was never assailed before any Court or Tribunal by the present appellants or similarly situated persons of the P.T.G.T.S. class which merged with P.T.G.T.O. vide Govt. Order dated 03.05.2011.

30. While the seniority list dated 17.11.2017 remained undisputed, in the meantime, the Uttar Pradesh Transport Taxation (Subordinate) Service (1st amenmdent) Rules 2018 was promulgated on 05.03.2018.

During this period, the selection process was initiated in respect of the post of Assistant Regional Transport Officer accruing against 8 vacancies for the selection year 2017-18 and 4 vacancies accruing in the selection year 2018-19.

31. Thereafter, the Transport Commissioner again circulated another tentative seniority list dated 30.01.2019 which in effect disturbed the seniority list dated 17.11.2017. The respondents herein raised their objections against the decision of the Transport Commissioner based on order dated 19.12.2018 passed by the State Government and being aggrieved, the respondents herein again preferred W.P. No. 3654 (S/S) of 2019 wherein they sought a relief seeking quashing of the order dated 19.12.2018 as well as the impugned seniority list dated 30.01.2019.

32. In the aforesaid writ petition No. 3654 (S/S) of 2019, the learned Single Judge of this Court found that the issue involved could be resolved by directing the Competent Authority i.e. Transport Commissioner to pass appropriate order without being influenced with the order dated 19.12.2018 by means of which the State had issued certain directions to the Transport Commissioner. The relevant portion of the judgment/order dated 07.02.2019 passed in W.P. No. 3654 (S/S) of 2019 reads as under:-

> *"Accordingly, this writ petition is finally disposed of with the direction to the Transport Commissioner, Uttar Pradesh, Lucknow (respondent No.4) to pass appropriate order in regard to the controversy involved in the present writ petition for the placement of private respondents in the seniority list ignoring the order dated 19.12.2018 passed by the State Government, taking into consideration promulgation of Rules on 5.3.2018 in the light of the observation made in the judgment and order dated 13.4.2017 after affording an opportunity of hearing to the petitioners and to the private respondents within a period of 6 weeks from the date of production of certified copy of this order."*

33. That in furtherance of the order passed by the learned Single Judge of this Court dated 07.02.2019 in W.P. No. 3654 (S/S) of 2019, the Transport Commissioner while rejecting the objections preferred by the respondents herein finalized the seniority list by means of order dated 15.04.2019. The result of which was that the appellants herein who were the P.T.G.T.S. and whose posts were upgraded as P.T.G.T.O. in pursuance of the Government Order dated 03.05.2011 were all placed above the respondents herein who were appointed as direct recruits to the post of P.T.G.T.O. These two orders; ***(i)*** dated 15.04.2019 by which the objections of the respondents herein regarding the seniority was rejected and **(ii)** the final seniority list issued by the Transport Commissioner of the same date i.e. 15.04.2019, were assailed by the respondents herein in W.P. No. 12438 (S/S) of 2019 which has been allowed by means of judgment dated 20.10.2020 which is under challenge in these instant, three, intracourt appeals.

34. The respondents herein, who were eligible to be considered for the post of Assistant Regional Transport Officer, despite lapse of substantial time and their case was not being considered, hence, the respondents herein prefererred a W.P. bearing No. 36294 (S/S) of 2018 (Vijay Kishore Anand and Others Vs. State of U.P. and Others).

35. In the aforesaid writ petition, two persons who belonged to the class of the appellants herein i.e. the persons who were initially appointed as P.T.G.T.S. and were upgraded to the post of P.T.G.T.O. vide Government Order dated 03.05.2011, were also impleaded as a party.

36. The Writ Court disposed of the aforesaid W.P. No. 36294 (S/S) of 2018 by means of judgment dated 17.01.2019 with the following directions:-

> *"**.....13**. On overall consideration of the material available on record, it is apparent on the face of record that the seniority list has been finalized in compliance of the judgment and order passed by*

> *this Court on 17.11.2017. It is also transpired that there are 12 vacancies of Assistant Regional Transport Officer existing in the department. The question that whether the respondent nos.5 and 6 are entitled to get promotion is also one of the issues to be determined by the competent authority in accordance with the amended service rules. This Court is not expressing any opinion in regard to absorption of the respondent nos.5 and 6 and other similarly situated Passenger/ Goods Tax Superintendents, who are also claiming seniority over and above the petitioners. As the rules was amended on 5.3.2018 and came into force at once meaning thereby on 5.3.2018. The respondent nos.5 and 6 and other similarly situated officers are entitled to get seniority over and above the petitioners can be subject matter of consideration in case they came to this Court to challenge the final seniority list dated 17.11.2017 on the ground that they are absorbed in service on the post of Passenger/ Goods Tax Officer in the department prior to the petitioners.*
>
> **14**. *This is a writ petition filed by the petitioners claiming promotion on the basis of seniority finalized on 17.11.2017 which has not been set aside nor modified by this Court or by any other competent authority, therefore the petitioners have made out a case for issuance of a direction to the respondents to consider the case of the petitioner for promotion on the post of Assistant Regional Transport Officer in pursuance to the final seniority list dated 17.11.2017 and to pass an appropriate, reasoned and speaking order in regard to their promotion within a period of two months from the date of production of a certified copy of this order."*

37. It will also be relevant to notice that few members of P.T.G.T.S. class such as the appellants herein had also preferred a writ petition before this Court at Allahabad bearing No. A-23347 of 2017 (Dr. Pratigya Srivastava and 6 Others Vs. State of U.P. and Others). In the aforesaid writ petition, the said petitioners had prayed for a writ of mandamus directing the State-respondents to take a final decision in respect of the amendment in the Uttar Pradesh Transport Taxation (Subordinate) Service Rules, 1980.

38. Before the Coordinate Bench at Allahabad, in the aforesaid writ petition, a plea was raised on behalf of the said petitioners that since the post of P.T.G.T.S. was upgraded and merged with the post of P.T.G.T.O. vide Government Order dated 03.05.2011, however, the Rules in respect thereto had not been amended, though, in respect of the post of Assistant Regional Inspector (Technical), the Rules had been amended, hence, in order to cure

the aforesaid anomaly, a direction was sought for directing the State Government to take a decision regarding the amendment of Rules of 1980.

39. Ultimately, the said writ petition came to be dismissed as having become infructuous since it was informed to the Court that the Rules had been amended by the 1st Amendment Rules of 2018.

40. Now in this backdrop of factual narration and past litigation the submissions of the parties is being noted:-

Submissions on behalf of the appellants; (private respondents before learned Single Judge)

41. Heard Sri Jaideep Narain Mathur, learned Senior Advocate assisted by Sri Shobhit Mohan Shukla, learned counsel for the appellants in Special Appeal No. 296 (SB) of 2020. Sri Sandeep Dixit, learned Senior Advocate assisted by Sri Dipesh Dwivedi, learned counsel appearing for the appellants in Special Appeal No. 302 of 2020 and Sri Anil Tiwari, learned Senior Advocate assisted by Sri Apoorva Tiwari, learned counsel appearing for the appellants in Special Appeal No. 303 of 2020. Sri H.P. Srivastava, learned Additional Chief Standing Counsel along with Sri Upendra Singh, learned Standing Counsel for the State in all the three appeals as well as Sri Gaurav Mehrotra, learned counsel along with Sri Abhinav Singh and Ms. Maria Fatima learned counsel for the private respondents (writ petitioners) in all the above three appeals.

42. **Sri Sandeep Dixit**, learned Senior Counsel opened the arguments on behalf of the appellants and has primarily made the following submissions:-

(i) The learned Single Judge had misconstrued the controversy, inasmuch as, it failed to take note of Rule 4, 5 and 22 of the Rules of 1980. It is further

urged that the decision taken by the Pay Committee which was given effect to vide Government Order dated 03.05.2011 by virtue of which the Payscales of P.T.G.T.S. was upgraded and brought at par with the Payscales applicable to the post of P.T.G.T.O. The aforesaid power was conferred upon the State Govrnments in terms of Rule 22 of the Rules of 1980. Similarly Rule 4 of the Rules of 1980 conferred power upon the State Government to change the strength and the number of posts in the Cadre including in respect of each category. This enabling provision empowered the State Government to carry out the re-structuring in the cadre, hence, there was actually no requirement to amend the Rules for the aforesaid purpose. Since, the aforesaid Rules empowered the State Government to undertake the aforesaid exercise which in terms of the Government Order dated 03.05.2011 was made effective immediately i.e. on 03.05.2011 consequently, from the said date, the appellants herein belonging to P.T.G.T.S. Class, were upgraded and their posts were re-designated as P.T.G.T.O., hence, the view taken by the learned Single Judge that the aforesaid exercise could not have been done without amendment in the Rules of 1980 is not quite correct.

(ii) It has also been urged by the learned Senior Counsel that the decision rendered by a Division Bench of this Court dated 13.04.2017 passed in W.P. No. 1802 (S/B) of 2015 (Vijay Kishore Anand and Others Vs. State of U.P. and Others) did not take note of the aforesaid Rules, hence, the aforesaid decision cannot be said to be a binding precedent, inasmuch as, it has been rendered *per incuriam.*

(iii) It is also urged by the learned Senior Counsel that though in the said writ petition bearing No. 1802 (S/B) of 2015, there was a direct challenge to the Government Order dated 03.05.2011 but the same did not find favour with the Court and though the Writ Petition was allowed but in effect it only set aside the seniority list dated 11.09.2015 and did not hold that the Government Order was bad nor it was quashed. Thus, once the Government

Order though challenged, was maintained, now it is not open for the private respondents to urge that the Government Order was bad and that without amending the Rules, the same could not be given effect to.

43. It has further been submitted by the learned Senior Counsel that the effect of the Division Bench Judgment in W.P. No. 1802 (S/B) of 2015 was only to the effect that the seniority list dated 11.09.2015 was set aside and the State Government was directed to prepare a fresh list within the time so prescribed. Emphasis being, that the creation or abolition of post was merely a policy decision of the Government which was referrable to the powers conferred upon the State Government in terms of Rule 4 read with Rule 5 and 22 and the view contrary taken by the learned Single Judge that the impugned order as well as the seniority list dated 11.09.2015 is in teeth of the order passed by the Division Bench in W.P. No. 1802 (SB) of 2015 is not correct, as the decision of this Court dated 13.04.2017 did not consider the aforesaid aspect of the matter.

44. **Sri Jaideep Narain Mathur**, learned Senior Counsel appearing for the appellants in Special Appeal No. 296 (S/B) of 2020 taking the aforesaid arguments further has urged that, if chronologically seen, upon the recommendations of the Pay Committee, the Government Order dated 03.05.2021 was issued. There perhaps cannot be any dispute that the State Government could have issued such a Government Order. The said Government Order required the merger and upgradation of posts from P.T.G.T.S. to P.T.G.T.O. along with enhancement in the Payscales to bring the same posts at par. The said Government Order was made effective from 03.05.2011. Thus, the present appellants who were upgraded to the post of P.T.G.T.O. had been working on the said Payscales and on the post of P.T.G.T.O. from 03.05.2011 whereas the present respondents (the original writ petitioners) were not even born in the said cadre as they came to be appointed only in the year 2013.

45. It is also urged by learned Senior Counsel that the Government Order dated 03.05.2011 was challenged initially in writ petition instituted by the Ministerial Service Association, Lucknow bearing W.P. No. 2811 (S/S) of 2011 where initially there was an interim order directing the parties to maintain status-quo, however, the aforesaid Writ Petition came to be dismissed as withdrawn. Subsequently, the present appellants also assailed the said Government Order by instituting a W.P. No. 336 (S/B) of 2015 which was withdrawn with liberty to file fresh and this further lead the private respondents herein to institute W.P. No. 1802 (S/B) of 2015 wherein again a challenge was raised to the Government Order dated 03.05.2011 but the same was not touched or set aside by the Court.

46. It is urged that this being the position, the necessary outcome was that in so far as the power of the Government to undertake the exercise of re-constructuring the cadre is concerned, the same was not found faulty. Once, the Government Order had been given effect to now it was merely an issue of seniority. Apparently, for the determination of seniority, it is the Uttar Pradesh Government Servants Seniority Rules, 1991 which are applicable. In terms of Rule 8 thereof, seniority is to be determined on the basis of the substantive appointment. Since the present appellants were appointed substantively w.e.f. 03.05.2011 whereas the present respondents were appointed only in the year 2013, hence they cannot be placed higher in seniority to the present appellants and the private respondents cannot steal a march over the present appellants. This aspect of the matter has not been considered by the learned Single Judge in the correct perspective.

47. Sri Mathur has further urged that since the post of P.T.G.T.S. had been abolished in the year 2011 and as per the Government Order dated 03.05.2011 strength of the cadre had been fixed at 120, thus, in order to accomodate the present respondents, supernumerary posts were created. The

appointment of the respondents on the supernumerary posts cannot be given the benefit of treating them as having been substantively appointed to enable them to avail the benefit of seniority over the present appellants.

48. It has also been urged by Sri Mathur that the learned Single Judge did not appreciate the fact that the alleged seniority list dated 17.11.2017 was only under pressure in light of the orders passed by the Contempt Court without considering the relevant aspect of the provisions and the learned Single Judge has also not noticed the effect of the subsequent orders passed by the Court in W.P. No. 3654 (S/S) of 2019 on 07.02.2019 whereby the direction was issued to the Transport Commissioner to pass appropriate orders in regard to the controversy involved in respect of the placement of the private respondents (who are the appellants herein) in the senority list taking into consideration the promulgamation of the 1st Amendment Rules on 05.03.2018 as well as the judgment and order dated 13.04.2017 after affording an opportunity of hearing to both the appellants and the respondents herein. It is actually in light of the aforesaid decision that the entire matter was open before the Transport Commissioner who considering the overall effect of the Rules 4 and 5 as well noticing the First Amendment Rules of 2018 as well as objections filed by the respective parties passed the order dated 15.04.2019 which did not require interference by the learned Single Judge.

49. Sri Mathur further urged that the effect of the seniority list dated 17.11.2017 which was in light of the orders passed by the Contempt Court is that the present appellants had been ousted from the zone of considerations for promotions for all times to come and this could never be the intention which works complete injustice to the present appellants who were working on the post of P.T.G.T.O. since 03.05.2011.

50. It is also urged by Sri Mathur that after the amendment in the 1st Amendment Rule, 2018, Rule 4 was amended and a 'Note' was appended thereto which was clearly explanatory and it gave retroactive effect to an occurrence which had already been implemented by the Government Order dated 03.05.2011. It is urged that the learned Single Judge has erred in treating the said explanatory note as a marginal note which has vitiated the outcome of the impugned judgment. In effect the Government Order dated 03.05.2011 had already been implemented in pursuance of powers referrable to Rule 4 and 22 and subsequent amendment brought in the year 2018 was only explanatory in nature as well as to remove the redundancy in the Rules of 1980 to bring it in conformity with the prevalent state of affairs.

51. It has also been pointed out that though the Rules could have been amended earlier but in view of the order of status-quo operating in W.P. No. 2811 (SS) of 2011, the said exercise could not be undertaken and only when the aforesaid petition came to be dismissed as withdrawn that the exercise was undertaken and also in view of the order passed by the coordinate Bench at Allahabad in W.P. No. A-23374 of 2017, that Rules were amended but nevertheless it did not rob the Government Order of its sanctity or the power of the State Government to re-structure the cadre to bring it in confirmity with the recommendations of the Pay Committee.

52. Sri Jaideep Mathur, learned Senior Advocate has placed reliance on a decision of the Apex Court in the case of ***Sundaram Pillai and Others Vs. V.R. Pattabiraman and Others*** reported in ***1985 (1) SCC 591*** and upon dictionary meaning and principles of Statutory Interpretation and significance ascribed to a 'Note'.

53. **Sri Anil Tiwari**, learned Senior Advocate appearing for the appellants in Special Appeal No. 303 of 2020 has urged that the decision of the Pay Committee which is the genesis of the Government Order dated 03.05.2011

was never challenged by the private respondents at any stage. Once, this initial order/decision was not challenged the subsequent decisions were only consequential for the purposes of bringing into effect the decisions so taken and thus the consequential orders alone cannot be challenged.

54. Urging further it has been submitted that though the private respondents had merely challenged the Government Order dated 03.05.2011 without assailing the decision of the Pay Commission and even the aforesaid challenge to the Government Order dated 03.05.2011 failed now it was not open for the private respondents to urge that the Government Order was in excess or in conflict with the Rules of 1980 or that the exercise of re-structuring the cadre could not have been done without first amending the Rules.

55. It has also been urged by Sri Tiwari that the earlier decision of the Division Bench dated 13.04.2017 passed in W.P. No. 1804 (S/B) of 2015 cannot operate as res-judicata in the subsequent stage of the litigation especially when it is based on an erroneous interpretation of law. It is urged by Sri Tiwari that the said earlier decision of 13.04.2017 was in ignorance of Rule 4 of the 1980 Rules, hence, the decision rendered could not operate as *res-judicata* and for the said reason heavy reliance placed, on the decision of the Division Bench dated 13.04.2017, by the learned Single Judge which is the basis of the impugned order in three appeals is not quite correct and requires judicial interference.

56. It is also urged by Sri Tiwari that it is always within the ambit and powers of the State Goverment to increase the number of posts in the cadre without affecting the conditions of service. Merger being along with the post and enlarging the cadre was merely an exercise of supplementing the Rules and it was not in derogation thereof and this aspect of the matter has also not been considered in the correct perspective by the learned Single Judge.

57. In support of his submissions the learned Senior Counsel has relied upon a decision of the Apex Court in the case of ***(i) Satendra Kumar and Others Vs. Raj Nath Dubey and Others*** reported in ***2016 (14) SCC 49***; ***(ii) Mathura Prasad Bajoo Jaiswal and Others Vs. Dossibai N.B. Jeejeebhoy*** reported in ***1970 (1) SCC 613*** and ***(iii) Vinay Kunar Verma and Others Vs. State of Bihar and Others*** reported in ***1990 (2) SCC 647***.

Submissions on behalf of the State of U.P.

58. **The Additional Chief Standing Counsel** Sri H.P. Srivastava has primarily adopted the submissions made by the learned Senior Counsel on behalf of the appellants, however, the crux of the submission of the Additional Chief Standing Counsel is that in pursuance of the recommendation of the Pay Committee, the Government Order dated 03.05.2011 after abolishing the 93 posts in the cadre of P.T.G.T.S and 133 posts of P.T.G.T.O. together with 37 posts were merged in the post of P.T.G.T.O. with a provision to fill up the said post only through direct recruitment from the Public Service Commission restricting the total posts to 120 and 50 posts which were in excess of 120 and which were occupied by the present incumbents, on their retirement/promotion or for any other reason, upon becoming vacant would stand abolished.

59. It is also contented that Rule 8 of the U.P. Government Servant Seniority Rules, 1991 provides for appointments being made from promotion or direct recruitment but the seniority would be considered from the date of the order of initial appointment on the substantive post. It is urged that since the Seniority Rules of 1991 provides for counting the seniority from the date of initial appointment which in the present case would mean 03.05.2011 for the appellants and not from the date when the Rules were amended in the year 2018. For the said reason and in light of the

submissions made in respect of the effect of Rule 4 of the 1980 also that an explanatory note has been appended in Rule 4 by the the 1st amendment Rules, 2018 which has not been correctly noticed by the learned Single Judge, which has vitiated the outcome hence the impugned order requires intervention.

Submissions of Private respondents (writ petitioners before learned Single Judge):

60. **Sri Gaurav Mehrotra**, learned counsel refuting the submissions of the learned Senior Counsel in the aforesaid three appeals, compositely has urged that from the bare perusal of Rule 4 (1) of the Rules of 1980 it will reveal that it did not confer any power on the State Government to merge one category of posts with another category, without amending the Rules. It is also urged that the Rule-4 only provides for changing the strength which denotes a change in numbers only but it cannot be extended to mean that it empowers the State Government to re-structure the cadre by abolishing the posts of P.T.G.T.S. and merging the same with a higher Post of P.T.G.T.O. Such an exercise could only be carried out by amending the Rules. It is further urged that the State Government was aware of the aforesaid and for the said reason in the Government Order dated 03.05.2011 itself provided that the Rules would be amended.

61. It has also been urged by Sri Mehrotra that the issue regarding the ambit of Rule 4 of the Rules of 1980 that it encompasses the power to merge as well as re-structure the Cadre by a Government Order was not raised before the learned Single Judge and has been only raised for the first time in Special Appeal No. 303 of 2020.

62. It is also submitted by Sri Mehrotra that prior to filing of the instant special appeals, it was never the case of any member of the appellants' class

or such similarly situate persons that the re-structuring could be done without amending the Rules. Even while a writ petition was filed before a coordinate Bench at Allahabad i.e. Dr. Pratigya Srivastava and Others Vs. State of U.P. & another (supra), the contention has always been that the State Government was required to amend the Rules which had not been done which was causing injustice and creating an impediment in the promotional avenues, hence, a direction was sought against the State Government for enacting the amended Rules.

63. It is also submitted that even assuming for a moment, though not conceded, that Rule 4 (1) of Rules of 1980 confers any power on the State Government to merge the two posts but then again there is clear cut findings against the said exercise of power in the decision rendered by the Division Bench dated 13.04.2017 passed in W.P. No. 1802 (S/B) of 2017 and the said decision was never assailed before any superior Court and had attained finality . It is urged that though the said decision dated 13.04.2017 was put under review but the Review Petition was also dismissed and no effort was made by the appellants to assail the said order before a Superior Forum either by any member of the appellants group or similarly situate person or by the State Governent. This being an undisputed position, the findings returned by the earlier Division Bench were binding both on the present appellants as well as the State-Governments and a mandamus having been issued by the Division Bench directing the State to prepare a seniority list in respect of the respondents and the same having been done by the Competent Authority by issuing the seniority list dated 17.11.2017 which again had attained finality as it was never challenged by any person of the appellants group or similar situate persons, hence, they cannot now take a contrary stand by submitting that the earlier decision was rendered *per incuriam* or was bad for ignoring Rule 4 of the Rules of 1980.

64. It is further urged by Sri Mehrotra that the submissions regarding the earlier decision dated 13.04.2017 being *per incuriam* was completely fallacious, inasmuch as, a decision even if *per incuriam* only has the effect of loosing its precedent value but it does not loose its binding effect, least of all, inter se the parties, upon whom it is binding.

65. It is also urged that it is now well settled that even an erroneous decision on a point of law, inter-se the parties, continues to operate as res-judicata and the submissions of the appellants, contrary is not quite in consonance with law. It is further submitted that the appellants herein belong to the Class of those persons who were initially appointed as P.T.G.T.S. and in pursuance of the Government Order dated 03.05.2011 were upgraded to the post of P.T.G.T.O. This class had contested the proceedings and as such not having assailed the earlier orders including the decisions of the Division Bench dated 13.04.2017 as well as the seniority list dated 17.11.2017 before any superior forum or before any Tribunal, hence, such findings became final and even if for a moment for the sake of argument it is considered to be erroneous yet the same cannot come to the rescue of the appellants at this subsequent stage of litigation, thus, the earlier decisions continue to have a binding effect and precludes the appellants from raising such arguments.

66. It is also urged by Sri Mehrotra that once the seniority list dated 17.11.2017 was issued by the Transport Commissioner in compliance of the mandamus issued by the Division Bench of this Court dated 13.04.2017 also after clarification from the Contempt Court, it was well within the knowledge of the appellants yet they chose not to assail the said seniority list. It is now well settled that once a seniority list has been finalised then it is not open for the Authority concerned to tinker with the same. If at all the appellants had any grievance, the same could only have been agitated before this Court or before a Tribunal but the Executive did not retain any power to

change or amend the said seniority list and for the said purpose the impugned order dated 15.04.2019 passed by the Transport Commissioner was in excess of jurisdiction and the fact that the private respondents had specifically raised such objections before the Authority concerned, yet the same was not considered and brushing the same aside, the Transport Commissioner passed the impugned order which was challenged before the learned Single Judge and the same has rightly been set aside by the learned Single Judge.

67. Sri Mehrotra in support of his submissions relies upon a decision of the Apex Court in the case of ***H.S. Vankani and Others*** Vs. ***State of Gujarat and Others*** reported in ***2010 (4) SCC 301*** ; ***Ambika Prasad Mishra Vs. State of U.P. and Others*** reported in ***1980 (3) SCC 719***; ***A.R. Antulay Vs. R.S. Nayak and Another*** reported in **1988 (2) SCC 60***;* and in the case of ***Dr. Subramaniam Swamy Vs. State of Tamil Nadu and Others reported and Others*** in ***2014 (5) SCC 75.***

68. Taking his arguments further, Sri Mehrotra has also submitted that the seniority list dated 17.11.2017 was in pursuance of a Mandamus issued by the Division Bench of this Court in W.P. No. 1802 (S/B) of 2015 dated 13.04.2017. It is submitted that the effect of a mandamus issued cannot be diluted nor it can be done away with by an amendment. It is submitted that once the Division Bench in its decision dated 13.04.2017 found that the Government Order dated 03.05.2011 was not in confirmity with the Rules and it could not introduce something which was not provided in the Rules, hence, with the aforesaid findings the mandamus was issued, hence, even by the amendment the effect of such a mandamus could not be diluted. In support of his submission, he relies upon a decision of the Apex Court in the case of ***Madan Mohan Pathak and Others Vs. Union of India and Others*** reported in ***1978 (2) SCC 50***.

69. It has also been urged by Sri Mehrotra that certain rights which had accrued to the respondents herein were valuable rights which could not have been taken away even by amending the Rules retrospectively. It is submitted that though it is not the case of the appellants or the State that the Rules were amended retrospectively but yet an argument has been raised that by appending the explanatory note to Rule 4 (1) by the 1st Amendment Rules, 2018, in effect it gave a retroactive effect to the merger of posts by the Government Order dated 03.05.2011, consequently, the seniority of the appellants ought to be recognized from 03.05.2011, is also erroneous. It is urged that once a right has been settled, it cannot be taken away even by introducing a retrospective amendment in a Statute. The Rules being subordinate piece of legislation cannot be treated at a pedestal higher than the legislation itself. What is impermissible in respect of the legislation cannot be made permissible in respect of a subordinate piece of legislation, such as the Rules of 1980.

70. In order to buttress his submissions, the learned counsel for the private respondents relies upon a decision of the Apex Court in the case of ***Chairman, Railway Board and Others Vs. C.R. Rangadhamaih and Others*** reported in ***1997 (6) SCC 623,*** case of ***J.S. Yadav Vs. State of U.P.*** reported in ***2011 (6) SCC 570*** and the case of ***Central Board of Dawoodi Bohra Community and Another Vs. State of Maharashtra and Another*** reported in ***2005 (2) SCC 673***.

71. Sri Mehrotra has also submitted that upon perusal of the record, it would indicate that in so far as the present private respondents are concerned, the process of selection was commenced by the Commission in the year 2009. The respondents were found duly eligible and having qualified were selected to the post of P.T.G.T.O. It is in the interim period that the Government Order dated 03.05.2011 came into the picture which was assailed by the Ministerial Service Association Transport Commissioner

Office, Lucknow in W.P. No. 2811 (SS) of 2011 wherein an order of status-quo was passed.

72. Upon due selection of the present respondents they could not be given the joining in view of the status-quo order as such the State Government made an application in the said W.P. No. 2811 (SS) of 2011 and the interim order maintaining status-quo was modified vide order dated 22.02.2013 to the extent that the 15 selected incumbents also included the present respondents were permitted to join on the post in question, however, their joining was made subject to further orders passed in the aforesaid writ petition. It is submitted that the respondents were given the substantive appointment from 22.07.2013 and 06.08.2013. Since the writ petition was dismissed as withdrawn, therefore, there was no effect on the substantive appointments of the respondents.

73. It is further urged that even creation of supernumerary posts as per Rule 4 (2) of the 1980 Rules, the same is well within the powers of the Government. The creation of the supernumerary posts and appointment thereon from time to time does not affect the date of appointment on a substantive post. It is urged that the definition of the word "substantive appointment" mentioned in Rule 4 (h) of the U.P. Government Servants Seniority Rules, 1991 clearly provides that substantive appointments means an appointment not being ad-hoc on a post in the cadre of service made after selection in accordance with the Service Rules relating to that service. It is submitted that in view of the aforesaid definition, it cannot be said that the appointment of the petitioners on a supernumerary post would not grant them the benefit of a substantive appointment. In support of his submission, he relies upon the decision of ***J.S. Yadav Vs. State of U.P. (Supra)*** wherein it has been held that the cadre may also include temporary, supernumerary and shadow posts created in different grades.

74. It is lastly urged by Sri Mehrotra that the impression given by the appellants that the seniority list dated 17.11.2017 has the effect of ousting the appellants from the zone of consideration of seniority and promotion for all times to come is absolutely misfounded. He has drawn the attention of the Court to the seniority list which has been forwarded to the State Government which includes the names of the appellants and the similarly situate persons. It has been pointed out that in pursuance of the seniority list dated 17.11.2017, the respondents have been placed from Serial Nos. 1 to 13 whereas the appellants herein have been placed from serial no. 14 onwards. Thus, the apprehension and submission of the appellants is clearly misconceived.

75. It is submitted that for all the aforesaid reasons, the submissions of the appellants are only fallacious and the decision of the learned Single Judge which considers the effect of the Division Bench decision of this Court dated 13.04.2017 as well as the finality attached to the seniority list dated 17.11.2017 does not require any interference and the three appeals be dismissed.

Discussions and Analysis:-

76. Upon consideration of the rival submissions, at the outset the primary ground of attack of the learned Senior Counsel for the appellants is based on the premise that the earlier Division Bench judgment of this Court dated 13.04.2017 is per incuriam and upon this premise it is urged that the scope of Rule 4(1) and (2) of the Rules of 1980 has not been considered in the correct perspective thus robbing the earlier judgment of its binding value. If Rule 4(1) and (2) of Rules of 1980 are construed in the manner as suggested by the appellants, then it would be seen, that the merger of posts could be done without amending the Rules and as the appellants being in the cadre post prior in time from the date of induction of the respondent hence they

would be senior to the respondents, hence, the Transport Commissioner was right in placing the appellants above the respondents vide its order dated 15.04.2019 which has been incorrectly set aside by the learned Single Judge.

77. Moreover, it has been urged that the finding in the earlier Division Bench judgment would also not hamper or operate as res-judicata as it is based on erroneous appreciation of law rather it is based on ignorance of the relevant Rule 4 of 1980 Rules.

78. Once the issue of seniority is looked afresh, in light of the submissions made by the learned Senior Counsel for the appellants, considering the 1st Amendment Rules of 2018 having been promulgated and the matter being thrown open to be considered again by the decision of the learned Single Judge dated 07.02.2019 passed in W.P. No. 3654 (S/S) of 2019 with a fresh perspective it would reveal that the Transport Commissioner rightly passed the order dated 15.04.2019 which did not warrant any interference by the learned Single Judge.

79. It has also been urged that the Note appended to Rule 4 of the Rules of 1980 by the 1st Amendment Rules of 2018 was not a marginal note rather it was explanatory note having retroactive operation and the learned Single Judge erred in treating it to be a marginal note, thus, the judgment under challenge dated 20.10.2020 is suceptible to judicial interference.

80. In order to resolve the controversy involved in these appeals, the following points are being formulated which will be helpful in deciding the matter lucidly:-

Point 1:- Whether the earlier Division Bench decision dated 13.04.2017 passed in W.P. No. 1802 (S/B) of 2015 is per incurium and if so its effect on this subsequent round of litigation?

Point 2:- Whether the earlier Division Bench decision dated 13.04.2017 passed in W.P. No. 1802 (S/B) of 2015 and its findings therein would operate as resjudicata/constructive res-judicata, in this subsequent round of litigation and if so its effect?

Point 3:- The true import of the 'Note' appended to Rule 4 by the 1st Amendment Rules of 2018, as to whether it is a marginal or an explanatory note and whether it has a prospective or retrospective/retroactive effect?

Apart from the three points as noted above, the other submissions advanced by the learned Senior Counsel for the appellants shall be considered in the 4th point under the head of Ancillary arguments, as under:-

Point 4:- ***Ancilary Arguments:-***

(a) Whether the date of 03.05.2011 could be considered to be the material date for ascertaining the seniority of the appellants?

(b) Whether the Transport Commissioner was justified in passing the order dated 15.04.2019 thereby disturbing the seniority list which was circulated in pursuance of the order passed by a Division Bench dated 13.04.2017 ?

(c) Whether the writ petitioners (the respondents herein) can merely challenge the seniority list without assailing the Government Order dated 03.05.2011 while the Government Order dated 03.05.2011 stood affirmed as it was not set aside by the earlier Division Bench judgment dated 13.04.2017 in W.P. No. 1802 (S/B) of 2015.

81. Now, the Court embarks upon the exercise to answer the points as formulated within the framework of the arguments of the respective parties and the matter on record.

82. ***Point No. 1:-*** At the very outset, it will be relevant to note the meaning of the word 'per incuriam':-

In ***Black's Law Dictionary, Eighth Edition***, the word '***per incuriam***' has been defined as under:-

> *" per incuriam (per in-kyoor-ee-em), adj. (Of a judicial decision) wrongly decided, usu. because the judge or judges were ill-informed about the applicable law.*
>
> *There is at least one exception to the rule of stare-decisis. I refer to the judgments rendered per incuriam. A judgment per incuriam is one which has been rendered inadvertently. Two examples come to mind: first, where the judge has forgotten to take account of a previous decision to which the doctrine of stare decisis applies. For all the care with which attorneys and judges may comb the case law, errare humanum est, and sometimes a judgment which clarifies a point to be settled is somehow not indexed, and is forgotten. It is diction to a previous judgment that should have been considered binding, and in ingnorance of that judgment, with no mention of it, must be deemed rendered per incuriam; thus, it has no authority... the same applies to judgments rendered in ignorance of legislation of which they should have taken into account. For a judgment to be deemed per incuriam, that judgment must show that the legislation was not invoked.' Louis-Philippe Pigeon, Drafting and interpretating Legislation 60 (1988).*
>
> *As a general rule the only cases in which decisions should be held to have been given per incuriam are those of decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the court concerned, so that in such cases some features of the decision or some step in the reasoning on which it is based is found on that account to be demonstrably wrong. This definition is not necessarily exhaustive, but cases not strictly within it which can properly be held to have been decided per incuriam, must in our judgment, consistently with the stare decisis rule which is an essential part of law, be of the rarest occurrence." Rupert Cross & J.W. Harris, Precedent in English Law 149 (4th ed. 1991)."*

83. In the ***Advanced Law Lexicon*** by ***P. Ramanatha Aiyer's (5th edition)***, it has been defined as under:-

> *"**Per incuriam**. (Lat.) (of a judicial decision) wrongly decided, usually because the Judge or Judges were ill-informed about the applicable law. Through inadvertence or through want of care. Through carelessness, through inadvertence.*
>
> *'Per incuriam' means 'through want of care'. A decision of the Court which is mistaken. A decision of the Court is not a binding precedent if given per incuriam, i.e. without the Court's attention having been drawn to the relevant authorities, or statutes.*
>
> *"As a general rule the only cases in which decisions should be held to have been given per incuriam are those of decisions given in ignorance or forgetfulness of some inconsistent statutory provision or of some authority binding on the Court concerned, so that in such cases some*

features of the decision or some step in the reasoning on which it is based is found on that account to be demonstrably wrong. This definition is not necessarily exhaustive, but cases not strictly within it which can properly be held to have been decided per incuriam, must in our judgment, consistently with the stare decisis rule which is an essential part of our law, be of the rarest occurrence." RUPERT CROSS & J.W. HARRIS, President in English law 149 (4th ed. 1991).
In HALSBURY'S Law of England (4th Edn.) Vol.26 at pp. 297-98, para 578, it is stated:
"A decision is given per incuriam when the Court has acted in ignorance of a previous decision of its own or of a Court of coordinate jurisdiction which covered the case before it, in which case it must decide which case to follow (Young v. Bristol Aeroplane Co. Ltd.) (1944) 1 KB 718, at p.729 : (1944) 2 All ER at p.293, 300). In Huddersfield Police Authority v. Watson, 1947 KB 842 Lord GODDARD, CJ. said that a decision was given per incuriam when a case or statute had not been brought to the Court's attention and the Court gave the decision in ignorance or forgetfulness of the existence of the case or statute): or when it has acted in ignorance of a House of Lords decision, in which case it must follow that decision; or when the decision is given in ignorance of the terms of a statute or rule having statutory force. [Young v. Bristol Aeroplane Co. Ltd., (1944) 1 KB 718 at p.729 : (1944) 2 All ER 293, 300 CA[As cited in State of Punjab v. Devans, Modern Brewaries Ltd., (2004) 11 SCC 26 157 para 340]"
Per incuriam. "per incuriam" are those decisions given in ignorance or forgetfulness of some statutory provision or authority binding on the Court concerned, or a statement of law caused by inadvertence or conclusion that has been arrived at without application of mind or proceed without application of mind or proceed without any reason so that in such a case some part of the decision or some steps in the reasoning on which it is based, is found that account to be demonstrably wrong. [State of Madhya Pradesh v. Narmada Bachao Andolan, (2011) 7 SCC 639, para 67]

84. Actually, the concept of per-incuriam has been developed by the English Courts which is to relax or dilute the Rule of Stare-decisis. The general and sancrosanct proposition, what is quotable in law is binding, can be avoided and ignored if it is rendered 'Inignoratiun' of a Statue or other 'Binding Authority'. The aforesaid concept has also been adopted by our Constitutional Courts.

85. The Constitution Bench of the Apex Court in the case of ***A.R. Antulay Vs. R.S. Nayak and Another*** reported in ***1988 (2) SCC 602*** while dealing with the issue of a decision being per-incuriam, in paragraphs 104 and 105 has held as under:-

> *".....**104.** To err is human, is the oft-quoted saying. Courts including the apex one are no exception. To own up the mistake when judicial satisfaction is reached does not militatte against its status or authority. Perhaps it would enhance both.*
>
> ***105.** It is time to sound a note of caution. This Court under its Rules of Business ordinarily sits in divisions and not as a whole one. Each Bench, whether small or large, exercises the powers vested in the court and decisions rendered by the Benches irrespective of their size are considered as decisions of the court. The practice has developed that a larger Bench is entitled to overrule the decision of a smaller Bench notwithstanding the fact that each of the decisions is that of the court. That principle, however, would not apply in the present situation and since we are sitting as a Bench of Seven we are not entitled to reverse the decision of the Constitution Bench. Overruling when made by a larger Bench of an earlier decision of a smaller one is intended to take away the precedent value of the decision without affecting the binding effect of the decision in the particular case. Antulay, therefore, is not entitled to take advantage of the matter being before a larger Bench. In fact, if it is a case of exercise of inherent powers to rectify a mistake it was open even to a Five Judge Bench to do that and it did not require a Bench larger than the Constitution Bench for that purpose."*

86. In the aforesaid case of ***A.R. Antulay (Supra),*** in a dissenting opinion by one of Hon'ble Judge of the Apex Court, though on the issue of per-incuriam, it is in consonance with the view expressed in the majority judgement, and worthy of mention and recorded in paragraphs 182 and 183 of the said report is being reproduced hereinafter:-

> ***".....182.** It is asserted that the impugned directions issued by the Five-Judge Bench was per incuriam as it ignored the statute and the earlier Chadha case [AIR 1966 SC 1418 : (1966) 2 SCR 678 : 1966 Cri LJ 1071] .*
>
> ***183.** But the point is that the circumstance that a decision is reached per incuriam, merely serves to denude the decision of its precedent value. Such a decision would not be binding as a judicial precedent. A co-ordinate Bench can disagree with it and decline to follow it. A larger Bench can overrule such decision. When a previous decision is so overruled it does not happen — nor has the overruling Bench any jurisdiction so to do — that the finality of the operative order, inter partes, in the previous decision is overturned. In this context the word 'decision' means only the reason for the previous order and not the operative order in the previous decision, binding inter partes. Even if a previous decision is overruled by a larger Bench, the efficacy and binding nature, of the adjudication expressed in the operative order remains undisturbed inter partes. Even if the earlier decision of the Five-Judge Bench is per incuriam the operative part of the order cannot be interfered within the manner now sought to be done. That apart the Five-Judge Bench gave its reason. The reason,*

> *in our opinion, may or may not be sufficient. There is advertence to Section 7(1) of the 1952 Act and to the exclusive jurisdiction created thereunder. There is also reference to Section 407 of the Criminal Procedure Code. Can such a decision be characterised as one reached per incuriam? Indeed, Ranganath Misra, J. says this on the point : (para 105)*
>
> *"Overruling when made by a larger Bench of an earlier decision of a smaller one is intended to take away the precedent value of the decision without effecting the binding effect of the decision in the particular case. Antulay, therefore, is not entitled to take advantage of the matter being before a larger Bench."*

87. Thus, from the pronouncement as noticed above, it is clearly discernable that the doctrine of per-incuriam merely takes away the precendent value of a decision but in no manner it dilutes or affects the binding nature of the aforesaid decision on the parties inter-se.

88. As far as the legal proposition of per incuriam and its binding effect on parties inter-se as explained by the Apex Court in the case of ***A.R. Antulay (Supra)*** is concerned it could not be disputed by the learned Senior Counsel for the appellants.

89. Applying the aforesaid principles to the present case, it would be crystal clear that the earlier decision rendered on 13.04.2017 in W.P. No. No. 1802 (S/B) of 2015 did take note of the Rules as well as the Government Order dated 03.05.2011, though, there is no specific mention of the Rule 4 but nevertheless it has given its finding concluding that the Government Order dated 03.05.2011 could not bring in effect, putting the persons like the appellants in seniority over the people like the respondents and at par without amending the Rules. The rules were before the earlier Division Bench and it cannot be said that the Rules of 1980 were not considered whereas the presumption is otherwise that after considering the entire Rules, the judgment was delivered especially when the judgment takes note of the Rules and the submissions of the parties and specific reference to the Rules of 1980 has been made therein.

90. This decision, between the two classes i.e. those who were directly recruited and appointed on the post of P.T.G.T.O. such as private respondents and those who were working as P.T.G.T.S. while their posts were merged with P.T.G.T.O., was rendered by a coordinate Bench and the said decision though challenged in the Review but unsuccessfully and not taken any further before any superiour Court, cannot be treated as per-incuriam.

91. Even though for the sake of argument, if at all, it is treated as such, nevertheless it will not rob the decision of its binding value on the two class of persons who are parties inter-se as noticed above, and thus this Court is unable to accept the submission of learned Senior Counsel that the earlier Division Bench judgement is per-incuriam. Accordingly, the submissions of the appellants relating to the earlier decision being per-incuriam is turned down.

Thus, point No. 1 is decided in the negative.

92. ***Point No. 2.*** The next submission of the learned Senior Counsel for the appellants is that the earlier decision will not operate as res-judicata in the present round of litigation, is also misconceived. As noticed above, the earlier round of litigation was between the two class. One of the said class, had agitated the matter and a finding was returned in the decision dated 13.04.2017. This finding which was returned regarding the Government Order not supplementing the Rules and that the effect of the Government Order could not be given effect without amending in the Rules is a finding which is binding inter-se between the same persons or class of persons including their representatives and the same can operate as res-judicata.

93. The doctrine of res-judicata has been explained by the Apex Court in the case of ***Dr. Subramanian Swami Vs. State of Tamil Nadu and Others*** reported in ***2014 (5) SCC 75*** wherein it has been held that even an erroneous decision on a question of law attracts the doctrine of res-judicata in between

the parties. The question regarding the correctness or otherwise of a judicial decision has no bearing upon the question whether or not it operates as res-judicata.

94. The relevant paras Nos. 39 to 48 from the aforesaid reported case of Subramanian Swami (Supra) reads as under:-

> *"**39.** The scope of application of doctrine of res judicata is in question. The literal meaning of "res" is "everything that may form an object of rights and includes an object, subject-matter or status" and "res judicata" literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgments". Res judicata pro veritate accipitur is the full maxim which has, over the years, shrunk to mere "res judicata", which means that res judicata is accepted for truth. The doctrine contains the rule of conclusiveness of the judgment which is based partly on the maxim of Roman jurisprudence interest reipublicae ut sit finis litium (it concerns the State that there be an end to law suits) and partly on the maxim nemo debet bis vexari pro una et eadem causa (no man should be vexed twice over for the same cause).*
>
> ***40.** Even an erroneous decision on a question of law attracts the doctrine of res judicata between the parties to it. The correctness or otherwise of a judicial decision has no bearing upon the question whether or not it operates as res judicata. (Vide Sha Shivraj Gopalji v. Edappakath Ayissa Bi [(1949) 62 LW 770 : AIR 1949 PC 302] and Mohanlal Goenka v. Benoy Kishna Mukherjee [AIR 1953 SC 65] .)*
>
> ***41.** In Raj Lakshmi Dasi v. Banamali Sen [AIR 1953 SC 33] , this Court while dealing with the doctrine of res judicata referred to and relied upon the judgment in Sheoparsan Singh v. Ramnandan Prasad Singh [(1915-16) 43 IA 91 : (1916) 3 LW 544 : AIR 1916 PC 78] , wherein it had been observed as under: (Raj Lakshmi Dasi case [AIR 1953 SC 33] , AIR p. 38, para 15)*
>
> *"15. ... '... the rule of res judicata, while founded on ancient precedent, is dictated by a wisdom which is for all time. ... Though the rule of the Code may be traced to an English source, it embodies a doctrine in no way opposed to the spirit of the law as expounded by the Hindu commentators. Vijnanesvara and Nilakantha include the plea of a former judgment among those allowed by law, each citing for this purpose the text of Katyayana, who describes the plea thus: "If a person, though defeated at law, sue again, he should be answered, 'you were defeated formerly'. This is called the plea of former judgment." ... And so the application of the rule by the courts in India should be influenced by no technical considerations of form, but by matter of substance within the limits allowed by law.' (Sheoparsan Singh case [(1915-16) 43 IA 91 : (1916) 3 LW 544 : AIR 1916 PC 78] , IA pp. 98-99)" (emphasis in original)*

42. *This Court in Satyadhyan Ghosal v. Deorajin Debi [AIR 1960 SC 941] explained the scope of principle of res judicata observing as under: (AIR p. 943, para 7)*

"7. The principle of res judicata is based on the need of giving a finality to judicial decisions. What it says is that once a res is judicata, it shall not be adjudged again. Primarily it applies as between past litigation and future litigation. When a matter—whether on a question of fact or a question of law—has been decided between two parties in one suit or proceeding and the decision is final, either because no appeal was taken to a higher court or because the appeal was dismissed, or no appeal lies, neither party will be allowed in a future suit or proceeding between the same parties to canvass the matter again. This principle of res judicata is embodied in relation to suits in Section 11 of the Code of Civil Procedure; but even where Section 11 does not apply, the principle of res judicata has been applied by courts for the purpose of achieving finality in litigation. The result of this is that the original court as well as any higher court must in any future litigation proceed on the basis that the previous decision was correct."

A similar view has been reiterated by this Court in Daryao v. State of U.P. [AIR 1961 SC 1457] , Greater Cochin Development Authority v. Leelamma Valson [(2002) 2 SCC 573 : AIR 2002 SC 952] and Bhanu Kumar Jain v. Archana Kumar [(2005) 1 SCC 787] .

43. *The Constitution Bench of this Court in Amalgamated Coalfields Ltd. v. Janapada Sabha Chhindwara [AIR 1964 SC 1013] , considered the issue of res judicata applicable in writ jurisdiction and held as under: (AIR p. 1018, para 17)*

"17. ... Therefore, there can be no doubt that the general principle of res judicata applies to writ petitions filed under Article 32 or Article 226. It is necessary to emphasise that the application of the doctrine of res judicata to the petitions filed under Article 32 does not in any way impair or affect the content of the fundamental rights guaranteed to the citizens of India. It only seeks to regulate the manner in which the said rights could be successfully asserted and vindicated in courts of law."

44. *In Hope Plantations Ltd. v. Taluk Land Board, Peermade [(1999) 5 SCC 590] , this Court has explained the scope of finality of the judgment of this Court observing as under: (SCC pp. 604 & 607, paras 17 & 26)*

"17. ... One important consideration of public policy is that the decisions pronounced by courts of competent jurisdiction should be final, unless they are modified or reversed by appellate authorities; and the other principle is that no one should be made to face the same kind of litigation twice ever, because such a process would be contrary to considerations of fair play and justice.

***

26. ... Rule of res judicata prevents the parties to a judicial determination from litigating the same question over again even though the determination may even be demonstratedly wrong. When the proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it."

(See also Burn & Co. v. Employees [AIR 1957 SC 38] , G.K. Dudani v. S.D. Sharma [1986 Supp SCC 239 : 1986 SCC (L&S) 622 : (1986) 1 ATC 241 : AIR 1986 SC 1455] and Ashok Kumar Srivastav v. National Insurance Co. Ltd. [(1998) 4 SCC 361 : 1998 SCC (L&S) 1137])

45. *A three-Judge Bench of this Court in State of Punjab v. Bua Das Kaushal [(1970) 3 SCC 656 : AIR 1971 SC 1676] considered the issue and came to the conclusion that if necessary facts were present in the mind of the parties and had gone into by the Court, in such a fact situation, absence of specific plea in written statement and framing of specific issue of res judicata by the court is immaterial.*

46. *A similar view has been reiterated by this Court in Union of India v. Nanak Singh [AIR 1968 SC 1370] observing as under: (AIR p. 1372, para 5)*

"5. This Court in Gulabchand Chhotalal Parikh v. State of Gujarat [AIR 1965 SC 1153] , observed that the provisions of Section 11 of the Code of Civil Procedure are not exhaustive with respect to all earlier decision operating as res judicata between the same parties on the same matter in controversy in a subsequent regular suit, and on the general principle of res judicata, any previous decision on a matter in controversy, decided after full contest or after affording fair opportunity to the parties to prove their case by a court competent to decide it, will operate as res judicata in a subsequent regular suit. It is not necessary that the court deciding the matter formerly be competent to decide the subsequent suit or that the former proceeding and the subsequent suit have the same subject-matter. There is no good reason to preclude such decisions on matters in controversy in writ proceedings under Article 226 or Article 32 of the Constitution from operating as res judicata in subsequent regular suits on the same matters in controversy between the same parties and thus to give limited effect to the principle of the finality of decisions after full contest."

47. *It is a settled legal proposition that the ratio of any decision must be understood in the background of the facts of that case and the case is only an authority for what it actually decides, and not what logically follows from it. "The court should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed."*

48. *Even otherwise, a different view on the interpretation of the law may be possible but the same should not be accepted in case it has the effect of unsettling transactions which had been entered into on the basis of those decisions, as reopening past and closed transactions or settled titles all over would stand jeopardised and this would create a chaotic situation which may bring instability in the society."*

95. It will be relevant to notice that the doctrine of constructive res-judicata is also important to note. A matter directly and substantially in issue, may again be so, either actually or constructively. It is constructive when it

might and ought to have been made a ground of attack or defence in former proceedings. It is well known that the doctrine of res judicata is codified in S. 11 of the Code of Civil Procedure but it is not exhaustive. Section 11 generally comes into play in relation to civil suits. But apart from the codified law, the doctrine of res judicata or the principle of res judicata has been applied since long in various other kinds of proceedings and situations by Courts in England, India and other countries. The rule of constructive res judicata is engrafted in Explanation IV of S. 11 of the Code of Civil Procedure and in many other situations also principles not only of direct res judicata but of constructive res judicata are applied. If by any judgment or order any matter in issue has been directly and explicitly decided, the decision operates as res judicata and bars the trial of an indentical issue in a subsequent proceedings between the same parties. The principle of res judicata also comes into play when by the judgment and order a decision of a particular issue is implicit in it, that is, it must be deemed to have been necessarily decided by implication; then also the principle of res judicata on that issue is directly applicable. When any matter which might and ought to have been made a ground of defence or attack in the eyes of the law to avoid multiplicity of litigation and to bring about finality in it is deemed to have been constructively in issue and, therefore, is taken as decided.

96. This Court draws strength from the decisions of the Apex Court in the case of ***State of U.P. Vs. Nawab Hussain 1977 (2) SCC 806*** as well as from the case of ***Ferro Alloys Corporation Ltd. and Another Vs. Union of India and Others*** reported in ***1999 (4) SCC 149.***

97. Thus, in the present case, where the earlier Division Bench decision dated 13.04.2017 had been put to review unsuccessfully and thereafter it was not challenged in any appeal before any superiour Court, thus, the said decision attained finality. In such a situation where the litigation is between the same class of people, at a subsequent stage now, it cannot be urged that

the ealier decision was incorrect and the same cannot bind the present appellants.

98. Moreover, the issue of Government Order dated 03.05.2011 was directly in issue before the earlier Division Bench in W.P. No. 1802 (S/B) of 2015 and the submissions raised at this stage by the appellants and the State was very well open to them to raise and thus 'it might and ought to' have been made a ground in the former proceedings, hence, the submissions of the appellants is also hit by the doctrine of constructive res-judicata, as explained above.

99. Now if decisions cited by learned Senior Counsel Sri Tiwari are considered, it would indicate that in the case of ***Satendra Kumar (supra)***, the Apex Court while dealing with the issue of res-judicata in paragraph 16 of the said report has held and reiterated that the bar of res-judicata shall not apply, if it relates to another issue founded upon a different cause of action though the parties may be the same. The aforesaid decision does not lay down the proposition that in respect of the same issue the matter can be re-agitated even though if incorrectly decided.

100. It would be seen that the issue whether the members of P.T.G.T.S. as merged on the basis of Government Order w.e.f. 03.05.2011 whether is a valid exercise without amending the Rules, has been decided by a Division Bench on 13.04.2017. The seniority list on the basis of the aforesaid finding was quashed in the said decision.

101. It is the issue of seniority, in consequence of that said decision, which has been assailed before the learned Single Judge who has held the same to be bad as it is in the teeth of the Division Bench Judgment, accordingly, it cannot be said that the instant litigation was either in respect of a different issue arising out of a different cause of action, hence, the said decision does

not come to the rescue of the appellants. Specially when the seniority list was prepared on 17.11.2017 in compliance of the judgment dated 13.04.2017 and the same was not challenged and thereafter it also attained finality.

102. Now at this stage, the appellants cannot be permitted to do something indirectly which they failed to do directly. The said seniority list dated 17.11.2017 was binding as it has not been challenged before any Tribunal or Court. Same is the proposition held by the Apex Court in the case of ***Mathura Prasad (Supra),*** hence, the same also does not help the appellants for the reason, recorded hereinabove.

103. In so far as the decision regarding ***Vinod Kumar Verma (supra)*** is concerned, the said case is clearly distinguishable, inasmuch as, in the aforesaid case, the matter was regarding the merger of two cadres by an executive order but what is noticeable is that one cadre itself was created by an executive order and so by another executive order, it was merged. In the instant case, neither the service or posts of P.T.G.T.S. was created by an executive order rather it was an outcome of the Rules of 1980, thus, the merger without a specific enabling provision in the Rules of 1980, the same could not have been merged with the higher post of P.T.G.T.O. and this issue has already been considered by the earlier Division Bench in its decision dated 13.04.2017 in W.P. No. 1802 (SB) of 2015, hence, the said decision of ***Vinod Kumar Verma*** (Supra) also does not come to the rescue of the appellants.

In light of the above discussion, the submission of learned counsel for the appellants do not find favour with this Court and is turned down. Accordingly, Point No. 2 is decided in the affirmative.

104. ***Point No. 3:-.***Now to answer the point no. 3, it will be necessary to notice the provisions of the Rules of 1980 and also the change after the amendment in the year 2018.

105. Much emphasis has been laid on Rule 4, hence, it will be appropriate to reproduce Rule-4 which reads as under:-

> **"4. Cadre of the service --***(1) The strength of the service and of each category of posts therein shall be such as may be deternined by the Government from time to time.*
>
> *(2) The strength of the service and of each category of posts therein shall until orders varying the same are passed under sub-rule (1) be as given in Appendix 'A';*
>
> *Provided that ---*
> *(i) the appointing authority may leave unfilled or the Governor may hold in abeyance any vacant post without thereby entitling any person to compensation and;*
> *(ii) the Governor may create such additional permanent or temporary posts from time to time as he may consider proper;"*

106. It will be relevant to notice, that the Rule 5 has already been reproduced in the preceeding paragraphs of this judgment, however, at the cost of repetition, Rule 5 is also reproduced hereinafter to get a comprehensive overview of the Rules of 1980 at one place. Rule 5 reads as under:-

> ***"5. Source of recruitment--*** *Recruitment to the various categories of posts in the service shall be made from the following sources--*
>
> *(I) Passenger Tax, Goods-Tax Officer- (i) By direct recruitment through the Commission.*
> *(ii) By promotion through the Commission from amongst--*
> *(a) the permanent Tax Superintendent/Passenger Tax/Goods Tax Syperintendents who have put in at least five years of continuous service as such:*
> *(b) the permanent Assistant Public Prosecutors who have put in at least five years of continous service as such; and*
> *(c) the permanent Head Assistants, Head Clerks of the Transport Commissioner's Office, who have put in at least five years of continuous service as such:*
> *Provided that as far as possible the recruitment shall be so arranged that 50 per cent posts in the cadre are held by direct recruits and rest by promotion as follows:-*
> *(a) Tax Superintendent/Goods Tax, Superintendents/Passenger Tax Superintendents--40 per cent;*
> *(b) Assistant Public Prosecutors-5 per cent.*

(c) Head Assistant/Head Clerks in Transport Commissioner's Office-5 per cent.
(2) Tax Superintendents.- By promotion through the Commission from amongst the permanent passenger Tax/Goods Tax Superintendents.
(3) Passenger/Goods Tax Superintendents.-- (i) By direct recruitment through the Commission.
(ii) By promotion through the Commission from amonst:-
(a) the permanent Section in Charges Noter and Drafters and Stenographers of Transport Commissioner's Office who have put in at least five years of continuous service as such; and
(b) the permanent Head Clerks, Head Clerk-cum-Accountants and Stenographers in the Regional Transport Offices, who have put in at least five years of continuous service as such;
Provided that, as far as possible, the recruitment shall be so arranged that 50 per cent posts in the cadre are held by direct recruits, and rest by the promotion as follows:-
(a) Section in charge and Noter and Drafters -15 per cent.
(b) Stenographers in Transport Commissioner's Officer- 14 per cent
(c) Stenographers in Regional Offics-14 per cent."

107. The learned Senior Counsel for the appellants have also drawn the attention to Rule 14 which provides for determination of vacancies and it enables the Appointing Authority to determine and intimate to the Commission the number of vacancies to be filled during the course of the year of recruitment as also the number of vacancies to be reserved for the candidates belonging to Scheduled Castes, Scheduled Tribes and other Categories under Rule 6 of the 1980 Rules.

108. Rule 18 provides for appointment and it states that on occurrance of substantive vacancies, the Appointing Authority shall make appointments by taking candidates in the order in which they stand in the lists prepared under Rules 15, 16 and 17, as the case may be.

109. From the perusal of the Rule 15, 16 and 17 which has been referred to in Rule 18, it would indicate that it relates to procedure for direct recruitment and also for preparation of a combined lists of personnel comprising of persons working on the post of P.T.G.T.S., Tax Superitendent, Head Assistant/Head Clerks and also persons working incharge as Stenographers of the Transport Commissioner Office, Noters and Drafters,

Head Clerks and Head Clerk-cum-Accountant, Stenographers in Regional Offices on the basis of seniority.

110. Rule 22 indicates the scales of pay admissible to the persons appointed to various categories of posts in the service whether in substantive or officiating capacity or as temporary measure which shall be such as may be determined by the Government from time to time. Rule 22 has provided the scale of pay for the posts as mentioned therein.

111. An appendix-A has also been appended to the Rules after Rule 28 which provides for the posts and total strength against each such post.

112. It is sought to be urged by the appellants that where Rule 22 confers power upon the State Government to amend the Payscales and Rule 4 specifically confers powers on the Government to determine the strength of the service in each category of posts, the necessary corollary is that such powers also includes the power to re-structure the cadre including the merger of one post with a higher post as it is nothing but determining the number and strength of the posts.

113. It has been urged that a Government Order dated 03.05.2011 in effect raised the Payscale of the P.T.G.T.S. to that of P.T.G.T.O. This was well within the power of the State Government in terms of Rule 22. In the same breath, the same Government Order also determined the strength of service including the category of posts and thus P.T.G.T.S. posts were merged with the higher posts. As a result, the strength of the service was determined by abolishing the post of P.T.G.T.S. and increasing the number of posts of P.T.G.T.O. In effect with the enhancement of the Payscales and merger of the post, the Government Order stood implemented and nothing further was required to be done nor by the Rules of 1980 were to be amended, as this re-structuring could be done in terms of the Rule 4 and 22 iteself.

114. This Court upon considering the respective submissions of the parties as well as from the perusal of the record, finds that though Rule 4 does mention that the Government can determine the strength of service and each category of posts from time to time, however, at this stage, this Court is unable to accept this contention that it does bring within its ambit the power to re-structure the cadre since this aspect of the matter has already attained finality in light of the decision of the earlier Division Bench judgment dated 13.04.2017 passed in W.P. No. 1802 (S/B) of 2015. The relevant portion of the said decision reads as under:-

> *"10. Regard being had to the aforesaid decision, it is established that till day the provisions of Government Order dated 3.5.2011 have not become part of Rules, 1980. Rule 5 of the Rules, 1980 deals with the source of recruitment. Under the Rules, Permanent Tax Superintendents and Permanent Goods Superintendents are the feeding cadre of Passenger Tax, Goods Tax Officers. The Government Order dated 3.5.2011 has put them at par with the Passenger Tax, Goods Tax Officer, which amounts to amendment in the Rules.*
> *11. The Government Order dated 3.5.2011 provides the provisions contrary to the Rules, therefore it cannot be said that by way of Government Order, the State Government has supplemented the Rules.*
> *12. The State Government cannot be permitted to transgress the power of legislature by way of executive order.*
> *13. Therefore, we are of the view that since the decision taken by the State Government for restructuring the post and placing the Passenger Tax Superintendent at per with the Tax Officer has not been inserted in the Rules, the private respondents, who are posted as Passenger Tax Officers, have no right to be placed in the seniority list of Passenger Tax and Goods Tax Officers amongst the petitioners."*

115. From the perusal of the aforesaid, it would clearly indicate that the Coordinate Bench of this Court noticed the transgression of power by the State Government by implementing the Government Order dated 03.05.2011 and giving effect to it without amending the Rules. This was the primary reason, in view whereof the seniority list dated 11.07.2015 issued by the Transport Commissioner was quashed. The clear findings that since the

Rules had not been amended, the State merely by a Government Order dated 03.05.2021 could not bring the two posts of P.T.G.T.S. and P.T.G.T.O. at par cannot be assailed at this stage in the subsequent round of litigation.

116. Once the aforesaid findings were recorded in the judgment dated 13.04.2017, now it is not open to the appellants to urge that the decision dated 13.04.2017 did not consider, the applicability of Rule 4. Even otherwise, from the perusal of Rule 4, it merely confers the power on the State Government to determine the strength but does not confer any power to re-structure the cadre and to abolish the posts which is going to run contrary to the provisions contained in Rules.

117. In view of the aforesaid, this Court has no hesitation to hold that Rule 4 clearly provided the powers to determine the strength but not to bring in sweeping changes which had the effect of abolishing the posts and also affecting the feeding cadre which in effect also has a cascading effect on other rules and also for the reason that the finding recorded in its earlier decision of the coordinate Bench dated 13.04.2017 is binding as explained in the preceding paragraphs while dealing with Point No. 1 and 2.

118. The next limb of the argument relating to retrospective/retroactive operation of the Note appended to the amended rule is now being considered.

119. Before dealing with the aforesaid issue, it will be appropriate to note certain settled cannons of interpretation relating to provisions and in what circumstances retrospectively can be attributed.

This aspect has been noticed by the Apex Court in the case of ***Commissioner of Income Tax Vs. M/s. Essar Teleholdings Ltd.*** reported in ***2018 (3) SCC 253*** wherein paras 22 to 26, the Apex Court has held as under:-

"Important principles of statutory interpretation

.....22. *The legislature has plenary power of legislation within the fields assigned to them; it may legislate prospectively as well as retrospectively. It is a settled principle of statutory construction that every statute is prima facie prospective unless it is expressly or by necessary implications made to have retrospective operations. Legal maxim nova constitutio futuris formam imponere debet non praeteritis i.e. a new law ought to regulate what is to follow, not the past, contain a principle of presumption of prospectivity of a statute.*

23. *Justice G.P. Singh in Principles of Statutory Interpretation (14th Edn. in Chapter 6), while dealing with operation of fiscal statute, elaborates the principles of statutory interpretation in the following words:*

"Fiscal legislation imposing liability is generally governed by the normal presumption that it is not retrospective and it is a cardinal principle of the tax law that the law to be applied is that in force in the assessment year unless otherwise provided expressly or by necessary implication. The above rule applies to the charging section and other substantive provisions such as a provision imposing penalty and does not apply to machinery or procedural provisions of a taxing Act which are generally retrospective and apply even to pending proceedings. But a procedural provision, as far as possible, will not be so construed as to affect finality of tax assessment or to open up liability which had become barred. Assessment creates a vested right and an assessee cannot be subjected to reassessment unless a provision to that effect inserted by amendment is either expressly or by necessary implication retrospective. A provision which in terms is retrospective and has the effect of opening up liability which had become barred by lapse of time, will be subject to the rule of strict construction. In the absence of a clear implication, such a legislation will not be given a greater retrospectivity than is expressly mentioned; nor will it be construed to authorise the Income Tax Authorities to commence proceedings which, before the new Act came into force, had by the expiry of the period then provided, become barred. But unambiguous language must be given effect to, even if it results in reopening of assessments which had become final after expiry of the period earlier provided for reopening them. There is no fixed formula for the expression of legislative intent to give retrospectivity to a taxation enactment. ..."

24. *A three-Judge Bench of this Court in Govind Das v. CIT [Govind Das v. CIT, (1976) 1 SCC 906 : 1976 SCC (Tax) 133] , noticing the settled rules of interpretation laid down following in para 11: (SCC pp. 914-15)*

"11. Now it is a well-settled rule of interpretation hallowed by time and sanctified by judicial decisions that, unless the terms of a statute expressly so provide or necessarily require it,

retrospective operation should not be given to a statute so as to take away or impair an existing right or create a new obligation or impose a new liability otherwise than as regards matters of procedure. The general rule as stated by Halsbury in Vol. 36 of Laws of England (3rd Edn.) and reiterated in several decisions of this Court as well as English courts is that

'all statutes other than those which are merely declaratory or which relate only to matters of procedure or of evidence are prima facie prospective and retrospective operation should not be given to a statute so as to affect, alter or destroy an existing right or create a new liability or obligation unless that effect cannot be avoided without doing violence to the language of the enactment. If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only'.

If we apply this principle of interpretation, it is clear that sub-section (6) of Section 171 applies only to a situation where the assessment of a Hindu Undivided Family is completed under Section 143 or Section 144 of the new Act. It can have no application where the assessment of a Hindu Undivided Family is completed under the corresponding provisions of the old Act. Such a case would be governed by Section 25-A of the old Act which does not impose any personal liability on the members in case of partial partition and to construe sub-section (6) of Section 171 as applicable in such a case with consequential effect of casting of the members' personal liability which did not exist under Section 25-A, would be to give retrospective operation to sub-section (6) of Section 171 which is not warranted either by the express language of that provision or by necessary implication. Sub-section (6) of Section 171 can be given full effect by interpreting it as applicable only in a case where the assessment of a Hindu Undivided Family is made under Section 143 or Section 144 of the new Act. We cannot, therefore, consistently with the rule of interpretation which denies retrospective operation to a statute which has the effect of creating or imposing a new obligation or liability, construe sub-section (6) of Section 171 as embracing a case where assessment of a Hindu Undivided Family is made under the provisions of the old Act. Here in the present case, the assessments of the Hindu Undivided Family for Assessment Years 1950-1951 to 1956-1957 were completed in accordance with the provisions of the old Act which included Section 25-A and the Income Tax Officer was, therefore, not entitled to avail of the provision enacted in sub-section (6) read with sub-section (7) of Section 171 of the new Act for the purpose of recovering the tax or any part thereof personally from any members of the joint family including the petitioners."

25. *A Constitution Bench of this Court speaking through one of us, Dr A.K. Sikri, J. in CIT v. Vatika Township (P) Ltd. [CIT v. Vatika Township (P) Ltd., (2015) 1 SCC 1] , while considering as to whether proviso inserted in Section 113 of the Income Tax Act w.e.f. 1-6-2002 is prospective or clarificatory/retrospective*

noticed the general principles concerning retrospectivity. Following was laid down by the Constitution Bench in paras 28, 29 and 33: (SCC pp. 21, 22 & 24)

"28. Of the various rules guiding how legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bedrock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as lex prospicit non respicit: law looks forward not backward. As was observed in Phillips v. Eyre [Phillips v. Eyre, (1870) LR 6 QB 1] , a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.

29. The obvious basis of the principle against retrospectivity is the principle of "fairness", which must be the basis of every legal rule as was observed in L'Office Cherifien des Phosphates v. Yamashita-Shinnihon Steamship Co. Ltd. [L'Office Cherifien des Phosphates v. Yamashita-Shinnihon Steamship Co. Ltd., (1994) 1 AC 486 : (1994) 2 WLR 39 (HL)] Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation. We need not note the cornucopia of case law available on the subject because aforesaid legal position clearly emerges from the various decisions and this legal position was conceded by the counsel for the parties. In any case, we shall refer to few judgments containing this dicta, a little later.

***33. A Constitution Bench of this Court in Keshavlal Jethalal Shah v. Mohanlal Bhagwandas [Keshavlal Jethalal Shah v. Mohanlal Bhagwandas, AIR 1968 SC 1336] , while considering the nature of amendment to Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act as amended by Gujarat Act 18 of 1965, observed as follows: (AIR p. 1339, para 8)*
'8. ... The amending clause does not seek to explain any pre-existing legislation which was ambiguous or defective. The power of the High Court to entertain a petition for exercising revisional jurisdiction was before the amendment derived from Section 115 of the Code of Civil Procedure, and the legislature

has by the amending Act not attempted to explain the meaning of that provision. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act.'"
(emphasis in original)

26. *A two-Judge Bench, speaking through one of us, Dr A.K. Sikri, J. in Jayam & Co. v. CVAT [Jayam & Co. v. CVAT, (2016) 15 SCC 125] , again reiterated the broad legal principles while testing a retrospective statute in paras 14 and 18 which is to the following effect: (SCC pp. 137, 139 & 140)*
"14. With this, let us advert to the issue on retrospectivity. No doubt, when it comes to fiscal legislation, the legislature has power to make the provision retrospectively. In R.C. Tobacco (P) Ltd. v. Union of India [R.C. Tobacco (P) Ltd. v. Union of India, (2005) 7 SCC 725] , this Court stated broad legal principles while testing a retrospective statute, in the following manner: (SCC pp. 737-38 & 740, paras 21-22 & 28)
'(i) A law cannot be held to be unreasonable merely because it operates retrospectively;
(ii) The unreasonability must lie in some other additional factors;
(iii) The retrospective operation of a fiscal statute would have to be found to be unduly oppressive and confiscatory before it can be held to be unreasonable as to violate constitutional norms;
(iv) Where taxing statute is plainly discriminatory or provides no procedural machinery for assessment and levy of tax or that is confiscatory, courts will be justified in striking down the impugned statute as unconstitutional;
(v) The other factors being period of retrospectivity and degree of unforeseen or unforeseeable financial burden imposed for the past period;
(vi) Length of time is not by itself decisive to affect retrospectivity.' (Jayam & Co. case [Jayam & Co. v. CVAT, 2013 SCC OnLine Mad 2051] , SCC OnLine Mad para 85)
*****
18. The entire gamut of retrospective operation of fiscal statutes was revisited by this Court in a Constitution Bench judgment in CIT v. Vatika Township (P) Ltd. [CIT v. Vatika Township (P) Ltd., (2015) 1 SCC 1] in the following manner: (SCC p. 24, paras 33-35)
'33. A Constitution Bench of this Court in Keshavlal Jethalal Shah v. Mohanlal Bhagwandas [Keshavlal Jethalal Shah v. Mohanlal Bhagwandas, AIR 1968 SC 1336] , while considering the nature of amendment to Section 29(2) of the Bombay Rents, Hotel and Lodging House Rates Control Act as amended by Gujarat Act 18 of 1965, observed as follows: (AIR p. 1339, para 8)
"8. ... The amending clause does not seek to explain any pre-existing legislation which was ambiguous or defective. The power of the High Court to entertain a petition for exercising revisional jurisdiction was before the amendment derived from Section 115 of the Code of Civil Procedure, and the legislature has by the amending Act not attempted to explain the meaning

> *of that provision. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act."*
> *34. It would also be pertinent to mention that assessment creates a vested right and an assessee cannot be subjected to reassessment unless a provision to that effect inserted by amendment is either expressly or by necessary implication retrospective. (See CED v. M.A. Merchant [CED v. M.A. Merchant, 1989 Supp (1) SCC 499 : 1989 SCC (Tax) 404] .)*
> *35. We would also like to reproduce hereunder the following observations made by this Court in Govind Das v. CIT [Govind Das v. CIT, (1976) 1 SCC 906 : 1976 SCC (Tax) 133] , while holding Section 171(6) of the Income Tax Act to be prospective and inapplicable for any assessment year prior to 1-4-1962, the date on which the Income Tax Act came into force: (SCC p. 914, para 11)*
> *"11. Now it is a well-settled rule of interpretation hallowed by time and sanctified by judicial decisions that, unless the terms of a statute expressly so provide or necessarily require it, retrospective operation should not be given to a statute so as to take away or impair an existing right or create a new obligation or impose a new liability otherwise than as regards matters of procedure. The general rule as stated by Halsbury in Vol. 36 of the Laws of England (3rd Edn.) and reiterated in several decisions of this Court as well as English courts is that 'all statutes other than those which are merely declaratory or which relate only to matters of procedure or of evidence are prima facie prospective and retrospective operation should not be given to a statute so as to affect, alter or destroy an existing right or create a new liability or obligation unless that effect cannot be avoided without doing violence to the language of the enactment. [**Ed.**: The matter between two asterisks has been emphasised in Vatika Township case, (2015) 1 SCC 1.] If the enactment is expressed in language which is fairly capable of either interpretation, it ought to be construed as prospective only."*

120. Another decision relating to what meaning can be ascribed to a 'Note' appended to a Section and upon consideration it was held to be explanatory. The Apex Court in the case of ***United India Insurance Co. Ltd. Vs. Orient Treasurers Private Ltd.*** reported in ***2016 (3) SCC 46*** in para 39 held as under:-

> *".....**39.** It is a settled rule of interpretation that when the words of a statute are clear, plain or unambiguous i.e. they are reasonably susceptible to only one meaning, the courts are bound to give effect to that meaning irrespective of consequences. In other words, when a language is plain and unambiguous and admits of only one meaning, no question of construction of a statute arises, for the Act speaks for itself.*

> *Equally well-settled rule of interpretation is that whenever the NOTE is appended to the main section, it is explanatory in nature to the main section and explains the true meaning of the main section and has to be read in the context of main section (See G.P. Singh, Principles of Statutory Interpretation, 13th Edn., pp. 50 and 172). This analogy, in our considered opinion, equally applies while interpreting the words used in any contract."*

121. Similarly, in the case of ***Rai Sudhir Prasad Vs. State of Bihar and Others*** reported in ***2004 (13) SCC 25*** while considering a 'Note' appended to a Rule, The Apex Court held that it cannot derogate from the explicit words of substantive provisions. Para 16 of the said report reads as under:-

> "....**16.** A note to a rule cannot derogate from the explicit words of the substantive provision and must be read as explanatory and in harmony with it. The substantive provision is Rule 103(b) and the relevant note is Note 4, both of which clearly provide for additional pay at 20% of the pay of the officiating post. These provisions entitle the appellant to additional pay of the post of both Medical Superintendent and Principal."

122. Now, noticing the submissions of the learned counsel for the appellants that the Note appended to Section 4 by the First Amendment Rules, 2018 is not a marginal note as noticed by the learned Single Judge but an explanatory note and the effect would be that it recognises an event which has already taken place though not retrospective in effect but having a retroactive implication, hence, the appointments and working of the appellants stands saved and would be treated to be effective from 03.05.2011 and that being the date of substantive appointment, the appellants would be senior and deserve to be placed above the respondents in seniority.

123. The aforesaid submission sounds attractive but in order to arrive at a definitive conclusion, the same has to be tested on the touchstone of the principles of intrepretation as noticed above along with a meaningful consideration of the Rules of 1980, the Government Order dated 03.05.2011 and the 1st Amendment Rules of 2018.

124. For a better appreciation of the issue involved, it will be apposite to notice the Rule 4 unamended and also the amended Rule, side by side, which is being reproduced hereinafter:-

<table>
<tr><td></td><td>COLUMN 1
Existing rule</td><td colspan="5">COLUMN 2
Rule as hereby substituted</td></tr>
<tr><td rowspan="2">Cadre of Service</td><td>4 (1) The strength of the service and of each category of posts therein shall be such as may be determined by the Government from time to time.</td><td colspan="5">Cadre of Service 4(1) The strength of the service and posts therein shall be such as may be determined by the Government from time to time.</td></tr>
<tr><td>(2) The strength of the service and each category of posts therein shall until orders varrying the same are passed under sub-rule (1) be as given in appendix 'A'</td><td colspan="5">(2) The strength of the service and of each category of posts therein shall, until orders varrying the same are passed under subrule (1) be as given below:-</td></tr>
<tr><td rowspan="6"></td><td rowspan="6"></td><td colspan="3">Serial No.</td><td colspan="2">Number of post</td></tr>
<tr><td colspan="2">S.No. Name of the Post</td><td colspan="3">Permanent/ temporary/ total</td></tr>
<tr><td>1.</td><td>2.</td><td>3.</td><td>4.</td><td>5.</td></tr>
<tr><td>1.</td><td>Passenger Tax/ Goods Tax Officer</td><td>120</td><td>-</td><td>120</td></tr>
<tr><td colspan="5">Note:- The post of Passenger Tax/Goods Tax Superintendents has been merged in the post of Passenger Tax/Goods Tax Officer vide Government Order No. 1036/thirty-3-11-11-GE/11 dated May 03, 2011 with effect from May 03, 2011.</td></tr>
<tr><td>Provided that:-</td><td colspan="5">Provided that:-</td></tr>
<tr><td>(i) the appointing authority may leave unfilled or the governor hold in abeyance and vacant post without thereby entitling and person to compensation and;</td><td colspan="5">(i) the appointing authority may leave unfilled or the Governor may hold in abeyance any vacant post, without thereby entitling any person to compensation; or</td></tr>
<tr><td>(ii) The Governor may create such additional permanent or temporary posts from time to time and he may consider proper.</td><td colspan="5">(ii) The Governor may create such additional permanent or temporary posts as he may consider proper.</td></tr>
</table>

125. This Court upon considering the Rules of 1980 prior to amendment in the year 2018, finds that an Appendix-A has been appended after Rule 28. Rule 4 also makes a reference to the said Appendix-A. For the sake of convenience, the Appendix A as incorporated in the Rules of 1980 is being reproduced hereinafter:-

Sr. Nos.	***Name of the Post***	***Number of Posts***	
		Permanent	***Temporary***
1.	Passenger Tax Officer/Goods Tax Officer	26	.....
2.	Tax Superintendents	5	.....
3.	Passenger Tax Superintendents/Goods	54	52

126. Comparing the aforesaid provisions, it would reveal that the Appendix-A appended after Rule 28 of the Rules of 1980, has been lifted and inserted in Rule 4 itself by the 1st Amendment Rules of 2018 and the Note mentions that the post of P.T.G.T.S. has been merged with P.T.G.T.O. w.e.f. 03.05.2011. It will be seen that the number of temporary posts have been abolished and a total number of permanent posts of 120 has been incorporated.

127. Simplicitor, by lifting the appendix and inserting it in the amended Rule 4 by 1st Amendment Rules of 2018 and adding a Note thereto would by itself not necessarily give any indication that the said Note has retroactive operation. Apparently, there is no clear indication to the said effect. Had such a retrospective or retroactive operation intended for the said provision, the legislature would have provided clear indication to the aforesaid effect.

128. The aforesaid 'Note' cannot have a larger effect than the Rule itself. Even earlier, it was permissible for the State to determine the strength of the posts and the members of each posts which is provided in the appendix-A after Rule 28 and it is this appendix which has now been incoporated in the Rule itself in order to clarify that the post of P.T.G.T.S. (which finds mention in Appendix-A of the Rules of 1980) has been merged w.e.f. 03.05.2011 and this much only has been clarified by the 1st Amendment Rules of 2018.

129. The 1st amendment of 2018 which has been made effective w.e.f. 05.03.2018 and in absence of any indication by clear language or necessary implication it cannot be treated to operate retroactively or retrospectively. Merely, by appending a Note to the Rule it will not expand the scope of Rule 4 to have a larger effect or to overreach the main provision of Rule 4 itself. Moreover, when Rule 4 itself only provides for cadre of service and the said Rule 4 itself cannot be made retrospective or retroactive then by a Note it cannot enlarge the scope of Rule 4 to such an extent which would sum

contrary to the other rules which after amendment are to take effect from 05.03.2018.

130. As the cadre post of P.T.G.T.S. have been abolished, this Note clarifies the same and only incorporates the date thereof. This in itself cannot be interpreted to an extent as suggested by the appellants which will not only disturb the seniority, settled vide seniority list dated 17.11.2017 prepared in furtherance of the judgment dated 13.04.2017 passed by the Division Bench of this Court in W.P. No. 1802 (SB) of 2015.

131. Once, the preamble of the first Amendment Rules of 2018 indicates that the said Rules will come into effect immediately i.e. from 03.05.2018. A note appended in Rule 4 cannot be given a retroactive effect, inasmuch as, the aforesaid Note merely clarifies an existing fact that the posts P.T.G.T.S. have been merged w.e.f. 03.05.2011.

132. The 1st Amenment Rules of 2018 have to be read as a whole and where such comprehensive amendments have been incorporated vide 1st Amendment Rules of 2018, it does not at any place give indication that the purpose of the aforesaid 'Note' is to give any retroactive application.

133. There is another reason to hold that the Note does not intent to be retroactive or retrospective, inasmuch as, the 1st Amendment Rules clearly state that they come into effect from 05.03.2018. There is nothing to indicate in any of the amended provisions though exhaustive amendments have been carreid out by the Rules of 2018 yet only particular Rule would operate retrospectively.

134. As noticed above, the normal rule is that any Rule or provision will be prospective in operation unless it is specifically provided or can be deciphered as such by necessary implication. The language of the 1st

Amendment Rules of 2018 does not indicate that the Rules of 2018 have retrospective or retroactive application. On the contrary, it specifically provides that it shall come into effect from 05.03.2018. Thus on plain and clear reading of the said amended Rules, it cannot be said that it has retrospective/retroactive application.

135. Now, if it is tested, whether the said Rules can be considered retroactive by necessary implications even then the answer would be in the negative, for the reason that by giving such retroactive/retrospective operation, the existing rights in favour of the respondents which have been crystalized shall be impaired and would result in taking away such rights which were conferred, vested, in them after the decision of the Division Bench dated 13.04.2017 in W.P. No. 1802 (S/B) of 2015 and also in terms of the seniority list dated 17.11.2017 which attained finality as it was never assailed before any Court or Tribunal.

136. This Court is fortified in its view and draws strength from the decision of the Apex Court in the case of ***Chairman, Railway Board and Others Vs. C.R. Rangadhamaih and Others*** reported in ***1997 (6) SCC 623*** and the relevant paras 20 to 24 are being reproduced hereinafter:-

> ***".....20.*** *It can, therefore, be said that a rule which operates in futuro so as to govern future rights of those already in service cannot be assailed on the ground of retroactivity as being violative of Articles 14 and 16 of the Constitution, but a rule which seeks to reverse from an anterior date a benefit which has been granted or availed of, e.g., promotion or pay scale, can be assailed as being violative of Articles 14 and 16 of the Constitution to the extent it operates retrospectively.*
>
> ***21.*** *In B.S. Yadav v. State of Haryana [1980 Supp SCC 524 : 1981 SCC (L&S) 343 : (1981) 1 SCR 1024] a Constitution Bench of this Court, while holding that the power exercised by the Governor under the proviso to Article 309 partakes the characteristics of the legislative, not executive, power and it is open to him to give retrospective operation to the rules made under that provision, has said that when the retrospective effect extends over a long period, the date from which the rules are made to operate must be shown to bear, either from the face of the rules or by extrinsic evidence,*

reasonable nexus with the provisions contained in the rules. (SCR p. 1068 : SCC p. 557, para 76)

22. *In State of Gujarat v. Raman Lal Keshav Lal Soni [(1983) 2 SCC 33 : 1983 SCC (L&S) 231 : (1983) 2 SCR 287] decided by a Constitution Bench of the Court, the question was whether the status of ex-ministerial employees who had been allocated to the Panchayat service as Secretaries, Officers and Servants of Gram and Nagar Panchayats under the Gujarat Panchayat Act, 1961 as government servants could be extinguished by making retrospective amendment of the said Act in 1978. Striking down the said amendment on the ground that it offended Articles 311 and 14 of the Constitution, this Court said: (SCC p. 62, para 52)*

"52. ... The legislature is undoubtedly competent to legislate with retrospective effect to take away or impair any vested right acquired under existing laws but since the laws are made under a written Constitution, and have to conform to the do's and don'ts of the Constitution, neither prospective nor retrospective laws can be made so as to contravene Fundamental Rights. The law must satisfy the requirements of the Constitution today taking into account the accrued or acquired rights of the parties today. The law cannot say, twenty years ago the parties had no rights, therefore, the requirements of the Constitution will be satisfied if the law is dated back by twenty years. We are concerned with today's rights and not yesterday's. A legislature cannot legislate today with reference to a situation that obtained twenty years ago and ignore the march of events and the constitutional rights accrued in the course of the twenty years. That would be most arbitrary, unreasonable and a negation of history."

23. *The said decision in Raman Lal Keshav Lal Soni [(1983) 2 SCC 33 : 1983 SCC (L&S) 231 : (1983) 2 SCR 287] of the Constitution Bench of this Court has been followed by various Division Benches of this Court. (See K.C. Arora v. State of Haryana [(1984) 3 SCC 281 : 1984 SCC (L&S) 520 : (1984) 3 SCR 623] ; T.R. Kapur v. State of Haryana [1986 Supp SCC 584 : (1987) 2 ATC 595 : (1987) 1 SCR 584] ; P.D. Aggarwal v. State of U.P. [(1987) 3 SCC 622 : 1987 SCC (L&S) 310 : (1987) 4 ATC 72 : (1987) 3 SCR 427] ; K. Narayanan v. State of Karnataka [1994 Supp (1) SCC 44 : 1994 SCC (L&S) 392 : (1994) 26 ATC 724] ; Union of India v. Tushar Ranjan Mohanty [(1994) 5 SCC 450 : 1994 SCC (L&S) 1118 : (1994) 27 ATC 892] and K. Ravindranath Pai v. State of Karnataka [1995 Supp (2) SCC 246 : 1995 SCC (L&S) 792 : (1995) 30 ATC 69] .)*

24. *In many of these decisions the expressions "vested rights" or "accrued rights" have been used while striking down the impugned provisions which had been given retrospective operation so as to have an adverse effect in the matter of promotion, seniority, substantive appointment, etc., of the employees. The said expressions have been used in the context of a right flowing under the relevant rule which was sought to be altered with effect from an anterior date and thereby taking away the benefits available under the rule in force at that time. It has been held that such an*

amendment having retrospective operation which has the effect of taking away a benefit already available to the employee under the existing rule is arbitrary, discriminatory and violative of the rights guaranteed under Articles 14 and 16 of the Constitution. We are unable to hold that these decisions are not in consonance with the decisions in Roshan Lal Tandon [AIR 1967 SC 1889 : (1968) 1 SCR 185 : (1968) 1 LLJ 576] , B.S. Vedera [AIR 1969 SC 118 : (1968) 3 SCR 575 : (1970) 1 LLJ 499] and Raman Lal Keshav Lal Soni [(1983) 2 SCC 33 : 1983 SCC (L&S) 231 : (1983) 2 SCR 287] ."

127. Another decision in point is the Apex Court decision of ***Dr. B.S. Yadav Vs. State of Haryana and Others*** reported in ***1980 (Supplementary) SCC 524*** wherein in para 76, it has held as under:-

*"**76.** The amended Rule 12, as in force in Punjab, lays down the length of continuous service in a cadre post as the guiding criterion for fixing seniority. That rule was notified by the Governor on December 31, 1976 and was given retrospective effect from April 9, 1976. Since the Governor exercises a legislative power under the proviso to Article 309 of the Constitution, it is open to him to give retrospective operation to the rules made under that provision. But the date from which the rules are made to operate must be shown to bear, either from the face of the rules or by extrinsic evidence, reasonable nexus with the provisions contained in the rules, especially when the retrospective effect extends over a long period as in this case. No such nexus is shown in the present case on behalf of the State Government. On the contrary, it appears to us that the retrospective effect was given to the rules from April 9, 1976 for the mere reason that on August 25, 1976 the High Court had issued a notification fixing seniority of the promotees and direct recruits appointed to the Superior Judicial Service of Punjab. The notification issued by the Governor on December 31, 1976, will, therefore, operate on future appointments or promotions made after that date and not on appointments or promotions made before that date. The seniority of all officers appointed or promoted to the Superior Judicial Service, Punjab, before December 31, 1976 will be determined by the High Court according to the criterion of the dates of confirmation, without applying the rule of rotation. The seniority of those promoted or appointed after December 31, 1976 will be determined in accordance with the rules promulgated under the notification of that date. Insofar as we see, judicial officers from Serial Nos. 1 to 36 mentioned in Annexure 'P-I' to the Punjab writ petition, that is, beginning with Shri J.S. Chatha and ending with Shri Hardev Singh were appointed or promoted prior to December 31, 1976. Those from Serial No. 37 to Serial No. 43, that is beginning with Shri G.S. Kalra and ending with Shri H.L. Garg, were appointed or promoted after December 31, 1976. The validity of the notification dated December 31, 1976 was not*

> *seriously challenged before us, apart from its retrospectivity. We do not also see any constitutional or legal objection to the test of continuous officiation introduced thereby."*

138. Similarly in the case of ***Chandrawathi P.K. and Others Vs. C.K. Saji and Others*** reported in ***2004 (3) SCC 734***. the Apex Court in paragraph 34 has held as under:-

> ***"34.*** *However, so far as Civil Appeals Nos. 890-93 of 2002 are concerned, it appears that amendment to the rule had never come into force and, therefore, it is difficult to accept the contention of the learned counsel for the State that the degree-holders and diploma-holders were to be treated at par with the other cases. In fact, in terms of the rules applicable to the case of the Harbour Engineering Branch of the Kerala Port Trust, two categories, namely, degree-holders and diploma-holders have been placed separately, namely, Group A and Group B and as such the persons holding the respective qualifications would be governed by the rules as existing then. In that view of the matter, the respondents would be in the same position as in the case of T.R. Krishnan [Disposed of on 19-2-1990 (DB)] inasmuch as a right vested in them, in absence of the rule having been given a retrospective effect could not have been taken away. The State in exercise of its power under Article 309 of the Constitution of India may give retrospective effect to a rule but the same must be explicit and clear by making express provision therefor or by necessary implication but such retrospectivity of a rule cannot be inferred only by way of surmises and conjectures."*

139. Upon considering all the facts and circumstances and law applicable, if the Note is to be treated to operate retrospectively w.e.f. 03.05.2011 then it will also do violence to the other Rules of 1980. Thus in order to avoid such conflict and knowing the orders/judgment passed by the Courts from time to time, the 1st Amendment Rules of 2018 was promulgated bringing out exhaustive amendments in Rule Nos. 5, 6, 8, 10, 15, 17, 18, 19, 20, 21, 22 and Rule 24 and Appendix from Rule 28 has been ommitted and actually Rule 4 remained almost untouched except as noticed above, hence, the inescapable conclusion is that the Note is only explanatory to the Main Rule 4 and it explains the abolishing of the post of P.T.G.T.S. (about which was mentioned in the Appendix-A, earlier) and now the existing cadre post and its strength and category has been inserted in the Rule 4 relating to Cadre of

service itself and the Note only explains the abolition of the post of P.T.G.T.S. as per the decision vide Government Order dated 03.05.2011.

140. Thus, though the learned Single Judge may have erred in holding the aforesaid note to be marginal, but nevertheless, even though considering the Note to be explanatory, yet this Court is not inclined to accept the submissions that the said explanatory Note has a retroactive application, for the forgoing reasons.

In light of the detailed discussion, Point No. 3 is decided accordingly.

Ancillary Arguments 4. (a).

141. It has also been argued by the learned Senior Advocate that the appellants were working on the substantive post since 03.05.2011, accordingly, in terms of the Uttar Pradesh Government Seniority Rules, 1991, the seniority is to be considered from the date of substantive appointment which in the case of the appellants is 03.05.2011 whereas the private respondents were inducted only in the year 2013, thus, this aspect has not been considered in the correct perspective by the learned Single Judge.

142. From the perusal of the Service Rules,1980, it would indicate that the word "member of service" has been defined in Rule 3(g) and the word "Service" has also been defined in Rule 3 (h) (i). From the conjoint reading of the aforesaid Rules, it would indicate that the service relates to the Uttar Pradesh Transport Taxation (subordinate service) and the year of recruitment means the period of four months commencing commencing from first day of July of the calender month.

143. The member of the service as defined means a person appointed and serving in a substantive capacity under these Rules or the Rules or the

Orders enforeced prior to the commencement of the Rules to a post in the cadre of service. Drawing strength from the aforesaid, it would be seen that that the respondents were appointed in the year 2013 through the selection process initiated in the year 2009 against the substantive post, hence, they are the members of the service.

144. The first Amendment Rules of 2018, brought in a new insertion of Rule 3 (hh) wherein the word 'substantive appointment' has been defined to mean an appointment not being an ad-hoc appointment on a post to the cadre of service made after selection in accordance with the Rules and <u>if there were no Rules in accordance with the procedure prescribed for the time being by the executive instructions issued by the Government</u>.

.....(emphasis supplied)

145. The emphasis is, that by insertion of the aforesid Rule 3 (hh), it became applicable with the promulgation of 1st Amendment Rules of 2018 which came into force w.e.f. 05.03.2018. The power conferred for appointment on any post by executive instructions issued by the Government would only be applicable when there are no Rules.

146. In the present case, the Rules of 1980 were prevalent and the same did not incorporate any such amendments at that point of time. At the relevant time, the recruitment could be done only in terms of unamended Rules of 1980. The respondents being appointed on the substantive post for which the selection process started in the year 2009 cannot by any stretch of imagination be held to be appointed against any ad-hoc posts.

147. It would be further relevant to note that the word 'substantive appointment' which has been provided in the U.P. Government Servant Seniority Service Rules, 1991. Rule 8 clearly provides that where the appointments are made from promotion or direct recruitment or both, the

seniority would be counted from the date of order of initial appointments on the substantive post and if two or more persons have been appointed simultaneously then seniority would be counted on the basis of the order which has been shown in the order of appointment as prepared by the Commission or the Committee in order of merits.

148. Thus, it would be seen that Rule 8 of the Seniority Rules of 1991 clearly provides that the seniority would be counted from the date of initial appointment. It is not disputed that the Rules of 1991 were applicable to both the appellants as well as the respondents. In light of the discussion uptil now (while dealing with the applicability of Rules 4 and 5) it has been concluded that it was necessary to amend the Rules of 1980 noticed by the earlier Division Bench judgment dated 13.04.2017 and on the said basis, the earlier seniority list so prepared was quashed. Thus, the rules having been amended only by the First Amendment Rules, effective from 05.03.2018, hence, the appointments of the appellants would be treated from the said date when the said rules became effective. Thus, the submission that the respondents have been placed in precedence over the appellants even though they were not born in the cadre does not hold water and is consequently turned down.

Ancillary Arguments: Point No. 4(b)

149. It will be noticeable that the seniority list dated 17.11.2017 was finalized by the Transport Commissioner in pursuance whereof, the respondents amongst such others, who were eligible were placed ahead at serial no. 1 to 13. The appellants who have been working on the post of P.T.G.T.O. since 03.11.2011 have been placed from serial no. 14 onwards below the respondents. The seniority list dated 17.11.2017 was at no point of time challenged before any Court or Tribunal. It is now well settled that once a seniority list has been finalised by the Executive and not challenged before

any Court or Tribunal, subsequently, it is not open for the Executive to tamper with such seniority.

150. The decision of the Apex Court in the case of ***H.S. Vankani*** (supra) is on the said point wherein in paragraphs 38 and 39 of the said report it has held as under:

> *".....**38.** Seniority is a civil right which has an important and vital role to play in one's service career. Future promotion of a government servant depends either on strict seniority or on the basis of seniority-cum-merit or merit-cum-seniority, etc. Seniority once settled is decisive in the upward march in one's chosen work or calling and gives certainty and assurance and boosts the morale to do quality work. It instils confidence, spreads harmony and commands respect among colleagues which is a paramount factor for good and sound administration. If the settled seniority at the instance of one's junior in service is unsettled, it may generate bitterness, resentment, hostility among the government servants and the enthusiasm to do quality work might be lost. Such a situation may drive the parties to approach the administration for resolution of that acrimonious and poignant situation, which may consume a lot of time and energy. The decision either way may drive the parties to litigative wilderness to the advantage of legal professionals both private and government, driving the parties to acute penury. It is well known that the salary they earn, may not match the litigation expenses and professional fees and may at times drive the parties to other sources of money-making, including corruption. Public money is also being spent by the Government to defend their otherwise untenable stand. Further, it also consumes a lot of judicial time from the lowest court to the highest resulting in constant bitterness among the parties at the cost of sound administration affecting public interest.*
>
> ***39.** Courts are repeating the ratio that the seniority once settled, shall not be unsettled but the men in power often violate that ratio for extraneous reasons, which, at times calls for departmental action. Legal principles have been reiterated by this Court in Union of India v. S.K. Goel [(2007) 14 SCC 641 : (2009) 1 SCC (L&S) 873] , T.R. Kapoor v. State of Haryana [(1989) 4 SCC 71 : 1989 SCC (L&S) 636 : (1989) 11 ATC 844] and Bimlesh Tanwar v. State of Haryana [(2003) 5 SCC 604 : 2003 SCC (L&S) 737] . In view of the settled law the decisions cited by the appellants in G.P. Doval case [(1984) 4 SCC 329 : 1984 SCC (L&S) 767] , Prabhakar case [(1976) 2 SCC 890 : 1976 SCC (L&S) 367] , G. Deendayalan [(1997) 2 SCC 638 : 1997 SCC (L&S) 749] and R.S. Ajara [(1997) 3 SCC 641 : 1997 SCC (L&S) 851] are not applicable to the facts of the case."*

151. Even considering the cummulative effect of the decision passed by the learned Single Judge dated 17.01.2019 passed in W.P. No. 36294

(SS) of 2018 and the decision dated 07.02.2019 passed in W.P. No. 3654 (SS) of 2017 is that the seniority list had to be finalized by the Transport Commissioner considering the placement of both the appellants and the respondents herein by ignoring the order passed by the State-Government dated 19.12.2018, however, noticing the effect of the promulgamation of the 1st Amendment Rules of 2018 as well as in light of the decision dated 13.04.2017, thus, what was being done by the aforesaid decision was to consider the effect of the 1st Amendment Rules of 2018 after hearing the parties ignoring the decision of the State Government dated 19.12.2018.

152 The record further indicates that the present private respondents had filed detailed objections before the Transport Commissioner raising various issues including the effect of the earleir order passed by the Division Bench, the finality of the seniority list dated 17.11.2017 as well as the effect of the First Amendment Rules, 2018, however, the same has not been considered in the correct perspective as reflected in the order dated 15.04.2019 which was impugned along with the final seniority list of the same day before the learned Single Judge.

153. For the reasons already noted above once the seniority list dated 17.11.2017 had attained finality so also the decision dated 13.04.2017 passed by the coordinate Bench, hence, the only issue before the Transport Commissioner was to consider the placement of the present appellants for seniority taking note of the 1st Amendment Rules of 2018. It did not give right to a Transport Commissioner to re-open issues which had already been settled and to take a view which was contrary to the decision rendered by a coordinate Bench of this Court which if allowed to prevail would amount to overreaching the orders of the Court, consequently, the same has been rightly set aside by the learned Single Judge.

154. Lastly, upon proding the learned counsel for the respective parties, it was undisputed that the seniority list submitted before the State Government in furtherance of the judgment passed by the learned Single Judge dated 20.10.2020, the names of the appellants have been included at Serial No. 14 onwards while the respondents have been placed ahead of the appellants at Serial Nos. 1 to 13. Hence the apprehension of the learned Senior Counsel for the appellants is that the appellants have been ousted from the zone of consideration for promotion for all times is apparently misconceived and misfounded.

155. In light of the detailed discussions and in light of the Authorities of the Apex Court as noted above, the decision of ***Sunder Pillai (supra)*** does not help the appellants.

Ancillary Arguments Point No. 4(c).

156. The submissions of the learned Senior Counsel for the appellants Sri Anil Tiwari that in absence to challenge to the decision of the Pay Commission, 2008 in pursuance whereof the Government Order dated 03.05.2011 was issued, it is not open for the respondents to challenge the other acts which flow from the decision of the Pay Commission including the Government Order.

157. It will be relevant to notice that the respondents are aggrieved by the disturbance of the seniority list which was frustrated and could not have been tampered by the Executive. The Government Order dated 03.05.2011 was a reflective indicator of the decision and the resolution of the Government to implement the same, however, the manner in which the same is to be implemented and made effective is a little different issue. Now, once a decision is taken to which there is no challenge but if the aforesaid

decision is implemented by an Authority or in a manner against the provisions of law or in excess of Authority or jurisdiction vested, surely, the said action of implementation alone in the facts and circumstances of the present case can be challenged. Thus, the aforesaid submission is not worthy of consideration and is turned down.

Conclusion:-

For the reasons recorded hereinabove, this Court is in agreement with the judgment and order dated 20.10.2020 passed in W.P. No. 12438 (SS) of 2019 (Vijay Kishore Anand & Others Vs. State of U.P. and Others) and it does not suffer from an error to pursuade this Court to interfere in exercise of Appellate Powers conferred under Chapter VIII Rule 5 of the Allahabad High Court Rules, 1952, accordingly, all the three ***Special Appeal No. 296 of 2020 (Ashutosh Kumar Upadhyay & Others Vs. Vijay Kishore Anand & Others)***; ***Special Appeal No. 302 of 2020 (Ramesh Chandra & Others Vs. State Of U.P. Thru. Prin. Secy. Transport Dept. Lko. & Ors.)*** and ***Special Appeal No. 303 of 2020 (Mahesh Kumar Verma & Anr. Vs. Vijay Kishore Anand & Ors.***) are ***dismissed*** and the judgment of the learned Single Judge dated 20.10.2020 passed in W.P. No. 12438 (SS) of 2019 is affirmed.

In the facts and circumstances, the costs are made easy.

[Jaspreet Singh, J.] [Ramesh Sinha, J.]

Order Date : July, 14, 2021
Asheesh