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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
SURYA KANT, J.; J.B. PARDIWALA, J.
JUNE 27, 2022
SPECIAL LEAVE PETITION (C) NO. 11039 OF 2022
MANOJ PARIHAR & ORS. *versus* **STATE OF JAMMU & KASHMIR & ORS.**

Service Law - Judicial Service - Munisffs - The roster points do not determine the seniority of the appointees who gain simultaneous appointments; that is to say, those who are appointed collectively on the same date or are deemed to be appointed on the same date, irrespective when they joined their posts - The roster system is only for the purpose of ensuring that the quantum of reservation is reflected in the recruitment process. It has nothing to do with the inter- se seniority among those recruited. *(Para 29)*

Prospective Overruling - The law declared by a court will have retrospective effect, if not otherwise stated to be so specifically - Power to apply the doctrine of prospective overruling (so as to remove the adverse effect) must be exercised in the clearest possible term. *Referred to P.V. George v. State of Kerala, (2007) 3 SCC 557. (Para 26-28)*

Service Law - Direct recruitment - The preparation of inter se merit list of the selected candidates is inevitable, even in the absence of an explicit provision in the rule or policy, the recruitment authority cannot place the candidates inter se in the select list under the rule of thumb or by adopting the methodology which is inconsistent with the spirit of Articles 14 and 16 of the Constitution. The inter se merit list of the selected candidates can be prepared as a combined effect of several factors like written test, objective test, *viva-voce* and/or other parameters as may have been prescribed keeping in view the special requirement of service. *(Para 16)*

Service Law - Promotion based on merit- cum- seniority - Seniority by itself is not the only qualification for promotion to a selection post - The comparative merit has to be evaluated in which seniority will be one of the factors only - Even a junior most person may steal a march over his seniors and jump the queue for accelerated promotion. *(Para 16)*

(Arising out of impugned final judgment and order dated 27-05-2022 in SWP No. 1350/2011 passed by the High Court of Jammu & Kashmir and Ladakh at Jammu)

For Petitioner(s) Mr. Ranjit Kumar, Sr. Adv. Ms. Binu Tamta, Adv. Mr. Dhruv Tamta, Adv. M/S. Tamta Advocates, AOR

For Respondent(s) Mr. Sanjay Hegde, Sr.Adv. Mr. F.A. Natnoo, Adv. Mr. Ashok Mathur, AOR Mr. Tanveer Ahmed Mir, Adv. Mr. Kartik Venu, Adv. Ms. Swati Khanna, Adv. Mr. Arjun Singh Bhati, Adv. Mr. Faheem Shah, Adv.

O R D E R

1. This petition seeking leave to appeal under Article 136 of the Constitution is at the instance of unsuccessful original respondents in a writ application filed before the High Court of Jammu & Kashmir (Judicial Officers) and is directed against the judgment and order passed by a Division Bench of the High Court dated 27.05.2022 in the SWP No. 1350/2011 by which the High Court allowed the Writ Petition filed by the Respondents No. 3 to 19 herein (original writ applicants).

2. The facts giving rise to this special leave petition may be summarized as under:

2.1 At the outset, we may state that this is a 2nd round of litigation before this Court on the issue relating to fixation of the seniority of the Munsiffs (Batch of 2003) for promotion to the post of Sub-Judge in the State of Jammu & Kashmir (Now Union Territory).

2.2 This Court in the 1st round of litigation took notice of the fact that the respondents herein (original writ applicants) qualified at the Jammu and Kashmir Civil Services (Judicial) Examinations 2002 and were appointed as the Judicial Magistrates in 2002-03. They were placed higher in the merit list compared to the petitioners herein. However, the gradation list was prepared by applying the roster for direct recruitment as provided under Rule 5 of the Jammu and Kashmir Reservation Rules, 2005. This in effect led to the reserved category petitioners displacing the general category respondents in the gradation list. A Writ Petition was filed seeking to quash the gradation list of the Judicial Magistrates and for a direction to prepare the gradation list based on merit.

3. The High Court held as under:

"16. The issue raised in the present petition squarely falls within the judgment rendered by the Division Bench in Ashok Kumar Sharma's case. Though petitioners do not assail the Gradation List and the consequent promotion order on the ground that these are not constitutionally permissible and therefore ultra vires Constitution yet the law laid down in Indra Sawhney's case and relied upon in Ashok Sharma's case cannot go unnoticed, while dealing with present case as it touches constitutionally of the Reservation Rules whereupon the impugned Gradation List is based and therefore, validity of the High Court orders promoting private respondents on the basis of this placement in Gradation List. The Gradation List in question and promotion orders made on the basis thereof, in favour of private respondents, in implementation of reservation policy, are therefore, liable to be set aside on this ground alone. The conclusion so drawn, ordinarily, would clinches the matter. However, it would be, if not necessary, but appropriate to deal with the issues, other that constitutionality of Reservation in promotion scheme, raised in the petition…..

25. For the reasons discussed above, we find merit in challenge to Gradation List dated 01.06.2010 issued by respondent No. 2 as also order promoting respondents 3 and 4 as Civil Judge (Senior Division) on the basis of their placement in the Gradation List. Challenge to such other orders passed on the basis of the impugned Gradation List, allowing the private respondents, belonging to different Reserved Categories to steal march over the petitioners, is also to succeed. We are told that Petitioner 1 to 10 stand already promoted as Civil Judges (Senior Division) and so are respondents 3 to 12 and 14 and 15. The interest of petitioners 1 to 10 is, therefore, restricted to their placement at appropriate place in the seniority list of Civil Judges (Senior Division) maintained by respondent No. 2……

26. Petitioners 11 to 16 and Mis Mir Afroz (on deputation) Abdul Qayoom Mir and Manzoor Ahmad Zargar figuring at S.No. 19 to 27 in order of merit in the Merit List rank senior to respondents

4, 5 , 7 to 12 at S. Nos. 32, 37, 31, 33, 34, 41, 38, 30 in the Merit List, and already promoted as Civil Judges (Senior Division) vide different High Court Orders including High Court order No. 252 dated 04.07.2015 . Petitioners 11 to 16 and M/s. Mir Afroz (on deputation) Abdul Qayoom Mir and Manzoor Ahmad Zargar, therefore, had a right to be considered for promotions as Civil Judges (Senior Division) ahead of respondents 4, 5, 7 to 12 . The respondent No. 2 by ignoring petitioners claim and failure to accord consideration to their claim has infringed their fundamental rights guaranteed under Article 16 of the Constitution. However, M/s. Mir Afroz (on deputation) Abdul Qayoom Mir and Manzoor Ahmad Zargar, have not joined as petitioners in present petition. Petitioners have not questioned the orders whereby private respondents 4, 5, 7 to 12 were promoted including High Court order No. 252 dated 04.07.2015. Respondents 4, 5, 7 to 12 presumably have been working as Civil Subordinate Judges, Senior Division for quite sometime. We do not have definite information about the posts of Civil Judges (Senior Division) lying vacant as on date so as to examine whether petitioners 11 to 16 and M/s. Mir Afroz (on deputation) Abdul Qayoom Mir and Manzoor Ahmad Zargar, directed to be considered for promotion as Civil Judges (Senior Division) against such post without disturbing respondents 4 , 5, 7 to 12 and thereafter placed in the seniority list of Civil Judges (Senior Division) to be prepared by respondent No. 2 strictly in accordance with merit. We, therefore, refrain from setting aside the orders whereby respondents 4, 5, 7 to 12 have been promoted as Civil Judges (Senior Division). We direct respondent No. 2 to undertake an exercise to find out whether any posts of Civil Judge (Senior Division) are lying vacant as on date so that consideration is accorded to petitioners promotion against available posts. Let such exercise be completed with three months from today. In the event, no such posts (s) is/ are found lying vacant or less than the posts required to consider petitioners 11 to 16 are lying vacant, the order (s) whereby respondents 4, 5, 7 to 12 have been promoted as Civil Judges (Senior Division), to the extent necessary to accord consideration to petitioners 11 to 16, shall stand set aside on expiry of three months from today and consideration accorded to the petitioners' promotion against the available vacancies. On completion of the exercise either way respondent No. 2 shall reframe and notify the seniority list in accordance with merit."

4. The petitioners herein being dissatisfied with the aforesaid judgment and order passed by the High Court challenged the same before this Court by way of the Special Leave Petition (Civil) No. 3786 of 2016. Leave was granted. The Special Leave Petition got culminated in the Civil Appeal No. 6928 of 2021. The Civil Appeal No. 6928 of 2021 ultimately came to be disposed of by this Court holding as under:

"10. The main issue in the writ proceedings before the High Court is whether the seniority for the purpose of the gradation list can be founded on the basis of roster points and this issue would depend upon the view which is taken by the High Court on the legal position. As noted above, Mr. Gaurav Pachnanda, learned senior counsel has stated that the High Court has accepted the view that the gradation list is invalid. The High Court on its Administrative side is not precluded from taking a considered decision on this aspect of the matter…..

11. Consequently, the impugned judgment and order of the High Court dated 27 November, 2015 is set aside. The writ petition is restored to the file of the High Court for a decision afresh. Having regard to the pendency of the proceedings, we would request the High Court to dispose of the petition, on remand, preferably within a period of two months from the date of receipt of a certified copy of this order. In the meantime, pending the decision of the High Court, it would be appropriate if consequential directions on the basis of the gradation list for the batch of 2003 are held in abeyance so as to abide by the final result of the proceedings before the High Court. The High Court is at liberty on the administrative side to take a decision in the meantime….

12. The appeal is accordingly disposed of in the above terms."

5. In view of the aforesaid, the High Court re-heard the matter and took the view that the seniority should be fixed in accordance with the merit determined by the Public Service Commission and not in accordance with the roster points. We quote the relevant observations made by the High Court including the operative part of the impugned judgment and order as under:

"13. In the past, while it may be true that the High Court had been maintaining the seniority based upon the roster points, as mentioned under Rule 14 of the Reservation Rules of 1994 may be on the strength of the ratio of the judgment in P.S. Ghalaut, yet it cannot be ignored that the Apex Court on 10.03.2003 having declared the decision in P.S. Ghalaut as not laying good law on the subject, none of the authorities, including the High Court could have proceeded to make the roster points as the basis for determining the seniority and further make that a basis for promotions to the post of SubJudges. It needs to be reiterated that in the present case appointments of the selected officers were made in terms of Rule 42 of the Jammu & Kashmir Civil Services (Judicial) Recruitment Rules, 1967 vide Government Order dated 06.08.2003, i.e. much after the pronouncement of the judgment in Bimlesh Tanwar's case. It was precisely for that reason that the counsel representing the High Court had admitted before the Apex Court that the gradation list was invalid, which is the subject-matter of challenge in the present petitions….

14. We are told that both the petitioners and the private respondents have since been promoted as Sub-Judges and, therefore, even when there was an initial challenge to the promotion of respondent Nos. 3 & 4 in the writ petition, no promotions would be effected if the seniority was directed to be fixed as per merit….

15. Having considered the matter in the light of the facts and the law discussed hereinabove, we hold as under:-

a. The gradation list dated 01.06.2010 to the extent, and insofar as, it pertains to the selection made by the Public Service Commission for the post of Munsiffs in reference to Notification No. PSC/Ex-2001/64 dated 04.12.2001, is quashed.

b. The respondent No. 2 is directed to re-frame the seniority list in regard to the selection process for the post of Munsiffs, pertaining to notification dated 04.12.2001 , strictly in accordance with merit obtained by the selected candidates in the examination conducted by the Public Service Commission.

c. Such of the candidates, including the petitioners, who on account of the impugned gradation list were not promoted on time and, therefore, could not gain the requisite experience for appearing in the limited competitive examination in terms of the Jammu & Kashmir Higher Judicial Service Rules, 2009, would be held eligible to take such an examination, if another Civil Judge in the same post but lower in the reframed seniority list was eligible to take such an examination.

16. The writ petitions are, accordingly, disposed of."

6. Being dissatisfied with the aforesaid, the petitioners are once again before this Court with the present petition.

7. Mr. Ranjit Kumar, the learned Senior Counsel appearing for the petitioners vehemently submitted that the High Court committed a serious error in passing the impugned order. The learned Senior Counsel vehemently submitted that it cannot be argued as an absolute proposition of law that for the purposes of fixing seniority only merit is to be considered and not the roster points. He would submit that it should be left to the authorities such as the High Court in the case on hand to evolve a fair and just

principle, more particularly, whether the Rules governing the seniority are absent. He would submit that since the Recruitment Rules 1967 are silent with regard to the procedure of promotion of Munsiffs to the posts of Sub-Judges as well as the manner of determination of their inter-se seniority. The High Court on its administrative side in exercise of powers under Article 111 of the Constitution of Jammu & Kashmir which is *pari materia* with Article 235 of the Constitution of India had decided in its Full Court Resolution dated 04.12.1994 to adopt the Reservation Rules 1994 for the purpose of fixing the inter-se seniority of recruits for the post of Munsiff and this practice was followed consistently between 1995 and 2003.

8. Mr. Ranjit Kumar pointed out that the High Court adopted the methodology of fixing the seniority in accordance with the roster since 1995. First, it was applied to the 11 Munsiffs appointed in the year 1995, thereafter to the 10 Munsiffs appointed in the year 1997, thereafter to the 32 Munsiffs appointed in the year 2000, thereafter to the 17 Munsiffs appointed in the year 2001 and in the last 47 Munsiffs appointed in the year 2003 which included the petitioners and the respondents herein before this Court.

9. The learned Senior Counsel laid much emphasis on the fact that neither the petitioners herein nor the respondents herein thought fit to challenge either the Reservation Rules 1994 or the Full Court Resolution dated 04.12.1994 on the basis of which the candidates were appointed and their seniority was fixed in accordance with the roster. Both the sides were aware and conscious that the fixation of seniority in accordance with the roster was based on the decision of the Full Court and, more particularly, for the reason that the 2003 batch was not the first batch where roster was applied in terms of the Reservation Rules 1994.

10. He would submit that both the sides since their appointment in the year 2003 never questioned the legality and validity of the methodology adopted by the High Court for the purpose of fixation of seniority in accordance with the roster.

11. The learned Senior Counsel vehemently submitted that the High Court committed a serious error in applying the Jammu & Kashmir Reservation Rules 2005 which in turn came to be framed under the Jammu & Kashmir Reservation Act 2004 and notified on 21.10.2005 for the purpose of fixation of the inter-se seniority. The argument of the learned Senior Counsel is that the Act and the Rules framed thereunder, do not have any retrospective operation and they could not have been made applicable to fix the seniority of the appointees of the year 2003. Mr. Ranjit Kumar invited the attention of this Court to the proviso to Rule 37 which mandates that the Rules shall not apply to the vacancies or posts in respect of which advertisement have been issued or the selection process have been initiated before coming into force of the Rules 2005. In short, the argument of the learned Senior Counsel is that there cannot be any prospective operation of the Rules 2005. In the last, the learned Senior Counsel submitted that why should the petitioners suffer for no fault on their part as the 2003 batch is the last one to whom the Rules of 2005 are sought to be made applicable. In other words, the argument is that if the seniority is to be fixed in accordance with the merit of the appointees of the batch of 2003 and not on the basis of the roster points then many of the petitioners would have no chances of any further promotion.

12. In such circumstances referred to above, the learned Senior Counsel prays that there would be merit in his petition. Leave may be granted and the appeal may be admitted.

13. On the other hand, this petition has been vehemently opposed by the respective learned Counsel appearing for the private respondents, the High Court of Jammu & Kashmir and also the State of Jammu & Kashmir. All the learned Counsel in one voice submitted that no error, not to speak of any error of law could be said to have been committed by the High Court in taking the view that the seniority should be fixed in accordance with the merit determined by the Public Service Commission and not in accordance with the roster points. All the learned Counsel would submit that the law in this regard is no longer *res integra* and is well settled.

14. In such circumstances referred to above, all the learned Counsel appearing for the respondents pray that no case is made out for grant of leave and the petition may be dismissed.

Analysis

15. Having heard the learned Counsel appearing for the parties and having gone through the materials on record the only question that falls for our consideration is whether the inter-se seniority of the Munsiffs appointed by way of direct recruitment on the recommendations of the State Public Service Commission should be fixed/ determined on the basis of the roster points or in terms of the order of their inter-se merit at the time of their selection?

16. The first and the foremost aspect, we would like to clarify, is that in the case of direct recruitment, the preparation of *inter se* merit list of the selected candidates is inevitable, even in the absence of an explicit provision in the rule or policy, the recruitment authority cannot place the candidates *inter se* in the select list under the rule of thumb or by adopting the methodology which is inconsistent with the spirit of Articles 14 and 16 of the Constitution. The *inter se* merit list of the selected candidates can be prepared as a combined effect of several factors like written test, objective test, viva-voce and/or other parameters as may have been prescribed keeping in view the special requirement of service. Similarly, though not concerned in the present case, even in a case of promotion based on merit-cum-seniority, seniority by itself is not the only qualification for promotion to a selection post. If the criteria for promotion is merit-cum-seniority, the comparative merit has to be evaluated in which seniority will be one of the factors only. However, in the case of merit-cumseniority even a junior most person may steal a march over his seniors and jump the queue for accelerated promotion.

17. Keeping the aforesaid fundamental principle of service jurisprudence, we now proceed to consider the case law on the subject governing the rights of the parties before us as under.

18. In ***R.K. Sabharwal v. State of Punjab***, (1995) 2 SCC 745, this Court said as follows:

"5. We see considerable force in the second contention raised by the learned counsel for the petitioners. The reservations provided under the impugned Government instructions are to be

operated in accordance with the roster to be maintained in each Department. The roster is implemented in the form of running account from year to year. The purpose of "running account" is to make sure that the Scheduled Castes/Schedule Tribes and Backward Classes get their percentage of reserved posts. The concept of "running account" in the impugned instructions has to be so interpreted that it does not result in excessive reservation. "16% of the posts …" are reserved for members of the Scheduled Castes and Backward Classes. In a lot of 100 posts those falling at Serial Numbers 1, 7, 15, 22, 30 , 37, 44, 51, 58, 65, 72, 80, 87 and 91 have been reserved and earmarked in the roster for the Scheduled Castes. Roster points 26 and 76 are reserved for the members of Backward Classes. It is thus obvious that when recruitment to a cadre starts then 14 posts earmarked in the roster are to be filled from amongst the members of the Scheduled Castes. To illustrate, first post in a cadre must go to the Scheduled Caste and thereafter the said class is entitled to 7th, 15th, 22nd and onwards up to 91st post. When the total number of posts in a cadre are filled by the operation of the roster then the result envisaged by the impugned instructions is achieved. In other words, in a cadre of 100 posts when the posts earmarked in the roster for the Scheduled Castes and the Backward Classes are filled the percentage of reservation provided for the reserved categories is achieved. We see no justification to operate the roster thereafter. The "running account" is to operate only till the quota provided under the impugned instructions is reached and not thereafter. Once the prescribed percentage of posts is filled the numerical test of adequacy is satisfied and thereafter the roster does not survive. The percentage of reservation is the desired representation of the Backward Classes in the State Services and is consistent with the demographic estimate based on the proportion worked out in relation to their population. The numerical quota of posts is not a shifting boundary but represents a figure with due application of mind. Therefore, the only way to assure equality of opportunity to the Backward Classes and the general category is to permit the roster to operate till the time the respective appointees/promotees occupy the posts meant for them in the roster. The operation of the roster and the "running account" must come to an end thereafter. The vacancies arising in the cadre, after the initial posts are filled, will pose no difficulty. As and when there is a vacancy whether permanent or temporary in a particular post the same has to be filled from amongst the category to which the post belonged in the roster. For example the Scheduled Caste persons holding the posts at roster points 1, 7, 15 retire then these slots are to be filled from amongst the persons belonging to the Scheduled Castes. Similarly, if the persons holding the post at points 8 to 14 or 23 to 29 retire then these slots are to be filled from among the general category. By following this procedure there shall neither be shortfall nor excess in the percentage of reservation."

19. In ***Bimlesh Tanwar v. State of Haryana***, (2003) 5 SCC 604, this Court stated thus:

"19. It was submitted that having regard to the instructions issued by the Haryana Government in its circular letter dated 27-4-1972, roster points cannot be considered as seniority points and further having regard to the fact that these instructions have been followed by the High Court for a long time, there is absolutely no reason as to why such a practice should be deviated from. The learned counsel contended that this Court in Ajit Singh (II) 5 having categorically held that roster points are not intended to determine seniority between general candidates and reserved candidates, the impugned judgment cannot be faulted with.

24. The Rules, therefore, indisputably lay emphasis on merit. It for all intent and purport excludes the applicability of rule of appointment in terms of roster points.

33. The question as to whether the determination of inter se seniority would depend upon the filling up of the vacancies so far as the reserved categories are concerned, having regard to the roster points, in our opinion, is no longer res integra.

40. An affirmative action in terms of Article 16(4) of the Constitution is meant for providing a representation of a class of citizenry who are socially or economically backward. Article 16 of the Constitution of India is applicable in the case of an appointment. It does not speak of fixation of seniority. Seniority is, thus, not to be fixed in terms of the roster points. If that is done, the rule of affirmative action would be extended which would strictly not be in consonance of the constitutional schemes. We are of the opinion that the decision in P.S. Ghalaut does not lay down a good law."

20. In ***G.P. Doval v. Govt. of U.P.***, (1984) 4 SCC 329, this Court stated as follows:

"16. A grievance was made that the petitioners have moved this Court after a long unexplained delay and the Court should not grant any relief to them. It was pointed out that the provisional seniority list was drawn up on March 22, 1971 and the petitions have been filed in the year 1983. The respondents therefore submitted that the Court should throw out the petitions on the ground of delay, laches and acquiescence. It was said that promotions granted on the basis of impugned seniority list were not questioned by the petitioners and they have acquiesced into it. We are not disposed to accede to this request because Respondents 1 to 3 have not finalised the seniority list for a period of more than 12 years and are operating the same for further promotion to the utter disadvantage of the petitioners. Petitioners went on making representations after representations which did not yield any response, reply or relief. Coupled with this is the fact that the petitioners belong to the lower echelons of service and it is not difficult to visualise that they may find it extremely difficult to rush to the court. Therefore, the contention must be rejected.

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

21. In ***Kuldip Chand v. Union of India***, (1995) 5 SCC 680, this Court stated thus:

"4. It is next contended by Mr. M.M. Kashyap, learned counsel for the appellant, that Ashok Kumar disputed the correctness of the seniority list made on 23-12-1982 in his representations dated 10-1-1983 and 1-8-1983 which were duly considered and rejected. He allowed it to become final as he did not challenge the same till post of accountant became vacant. When it was rejected, he filed the writ petition in the High Court. There is a considerable delay in claiming his seniority over the appellant. It is true that the seniority list was prepared as early as on 23-12-1982 but no vacancy had arisen thereafter and, therefore, the mere rejection of the claim for seniority does not disentitle him to claim his seniority over the appellant for consideration by the respondent-Union.

5. When the aforesaid facts are taken into consideration, it would be obvious that the preparation of seniority list per se was illegal. Therefore, the mere fact that he did not challenge the seniority list, which was illegally prepared, till he was aggrieved for non-consideration of the claim to the post of accountant, his legitimate right to be considered cannot be denied. Under these circumstances, the delay is of no consequence for considering the claims of Ashok Kumar for the post of accountant."

22. The question as to whether the determination of inter-se seniority would depend upon the filling up of the vacancies so far as the reserved categories are concerned, having regard to the roster points, in our opinion, is no longer res integra.

23. In ***Ajit Singh v. State of Punjab***, (1999) 7 SCC 209, a five Judge Bench of this Court has laid down the law in the following terms:

"40. "It must be noted that whenever a reserved candidate goes for recruitment at the initial level (say Level 1), he is not going through the normal process of selection which is applied to a general candidate but gets appointment to a post reserved for his group. That is what is meant by "reservation". That is the effect of "reservation".

41. Now in a case where the reserved candidate has not opted to contest on his merit but has opted for the reserved post, if a roster is set at Level 1 for promotion of the reserved candidate at various roster points to Level 2, the reserved candidate, if he is otherwise at the end of the merit list, goes to Level 2 without competing with general candidates and he goes up by a large number of places. In a roster with 100 places, if the roster points are 8, 16, 24 etc. at each of these points the reserved candidate if he is at the end of the merit list, gets promotion to Level 2 by side-stepping several general candidates. That is the effect of the roster-point promotion.

42. It deserves to be noticed that the roster points fixed at Level 1 are not intended to determine any seniority at Level 1 between general candidates and the reserved candidates. This aspect we shall consider again when we come to Mervyn Continho v. Collector of Customs (1966) 3 SCR 600 lower down. The roster point merely becomes operative whenever a vacancy reserved at Level 2 becomes available. Once such vacancies are all filled, the roster has worked itself out. Thereafter other reserved candidates can be promoted only when a vacancy at the reserved points already filled arises. That was what was decided in R.K. Sabharwal v. State of Punjab (1995) 2 SCC 745."

24. In ***Ajit Singh (II)***, the decision of this Court in ***R.K. Sabharwal*** case has, thus, been explained as under:

"P.S. Ghalaut v. State of Haryana [(1995) 5 SCC 625] relied upon by Dr. Chauhan, is a decision rendered by a two Judge bench. In that case Rule 13 of the Rules envisaged that the seniority inter se of members of the service shall be determined by the length of continuous service on any post in the service; provided further that in the case of two or more members appointed by direct recruitment, the order of merit determined by the Commission shall not be disturbed in fixing the seniority. Despite the said Rule, it was held as under:

"Take for instance Vacancies Nos. 1 and 6, as pointed out in the Chief Secretary's letter have admittedly been reserved for Scheduled Castes. Suppose recruitment was made to fill up ten vacancies, three candidates from Scheduled Castes were selected on the basis of reserved quota. The question is whether the first candidate will be put in the quota allotted to the Scheduled Castes in the roster. Having been selected as a general candidate, though he is more meritorious than the second and third candidates, he will not get the placement in the roster, reserved for Scheduled Castes i.e. Nos. 1 and 6 points. Consequently candidates Nos. 2 and 3 will get the placement at Nos. 1 and 6 and the first candidate will get the placement in the order of merit along with the general candidates according to the order of merit maintained by the Selection Committee or the Public Service Commission. He cannot complain that having been selected in the merit, he must be placed in the placement reserved for Scheduled Castes at Point No. 1 in the roster. Equally, though general candidate is more meritorious in the order of merit prepared by the Public Service Commission or the Selection Committee, when the appointments are made and the vacancies are filled up according to the roster, necessarily and inevitably the reserved candidates though less meritorious in the order of merit maintained by the Public Service Commission would occupy the respective places assigned in the roster. Thereby they steal a march over some of the general candidates and get seniority over the general candidates. This scheme is, therefore, constitutional, valid and is not arbitrary."

We have not been able to persuade ourselves to the aforesaid view."

25. It will be of interest to note that the hypothetical situation taken up by this Court in ***P.S. Ghalaut*** (supra) where two reserved category candidates were pitted against each other, was actually extracted by this Court in para 36 of the report in ***Bimlesh Tanwar*** (supra) and this Court recorded that the same was not correct. In para 40 of the report this Court eventually held as follows:-

"40. An affirmative action in terms of Article 16(4) of the Constitution is meant for providing a representation of class of citizenry who are socially or economically backward. Article 16 of the Constitution of India is applicable in the case of an appointment. It does not speak of fixation of seniority. Seniority is, thus, not to be fixed in terms of the roster points. If that is done, the rule of affirmative action would be extended which would strictly not be in consonance of the constitutional schemes. We are of the opinion that the decision in P.S. Ghalaut does not lay down a good law."

26. What was done in ***Bimlesh Tanwar*** (supra) was actually a declaration of law. Therefore, the same will have retrospective effect. In ***P.V. George v. State of Kerala***, (2007) 3 SCC 557, this Court held that *"the law declared by a court will have retrospective effect, if not otherwise stated to be so specifically".*

27. This Court was conscious of the fact, as could be seen from paragraph 19 of the report in ***P.V. George*** (supra), that when the doctrine of *stare decisis* is not adhered to, a change in the law may adversely affect the interest of the citizens. But still this Court held that the power to apply the doctrine of prospective overruling (so as to remove the adverse effect) must be exercised in the clearest possible term.

28. Therefore, it is clear that anything done as a consequence of the decision of this Court in ***P.S. Ghalaut*** (supra), cannot stand since this Court did not apply the doctrine of prospective overruling in ***Bimlesh Tanwar*** (supra) in express terms. It goes as follows:-

"(i) In Union of India v. Virpal Singh [(1995) 6 SCC 684] , this Court upheld the stand taken by the Railways that reserved category candidates who got promotion at roster points would not be entitled to claim seniority at the promotional level as against senior general category candidates who got promoted at a later point of time to the same level. The Court held that the State was entitled to provide, what came to be known in popular terms as the "catch up rule" enabling the senior general category candidates who got promoted later, to claim seniority over and above the roster point promotee who got promoted earlier.

(ii) The catch up rule formulated in Virpal was approved by a three member Bench in Ajit Singh Januja v. State of Punjab [(1996) 2 SCC 715]. This case came to be known as Ajit Singh (I).

(iii) But, another three member Bench took a different view in Jagdish Lal v. State of Haryana [(1997) 6 SCC 538] and held that while the rights of the reserved candidates under Article 16(4) and 16(4-A) were fundamental rights, the right to promotion was a statutory right and that therefore, the roster point promotees have to be given seniority on the very same basis as those having continuous officiation in a post.

(iv) Since Jagdish Lal took a view contrary to the views expressed in Virpal Singh and Ajit Singh (I), the State of Punjab filed Interlocutory Applications before this Court, seeking clarifications. These Interlocutory Applications were placed before a Constitution Bench comprising of 5 Judges, in view of the fact that two Benches of coordinate jurisdiction (both three member Benches) had taken diametrically opposite views. The decision rendered by the larger Bench of 5 Judges on these Applications came to be known as Ajit Singh (II), in Ajit Singh v. State of Punjab [(1999) 7 SCC 209].

(v) Eventually, the Constitution Bench held in Ajit Singh (II) that the roster point promotees cannot count their seniority in the promoted category, from the date of their continuous officiation in the promoted post, vis-a-vis the general category candidates who were senior to them in the lower category and who were later promoted. As a consequence, Virpal and Ajit Singh (I) were declared to have been decided correctly and Jagdish Lal was declared to be incorrect."

29. Thus, the principle of law discernible from all the aforesaid decisions of this Court is that the roster system is only for the purpose of ensuring that the quantum of reservation is reflected in the recruitment process. It has nothing to do with the inter-se seniority among those recruited. To put it in other words, the roster points do not determine the seniority of the appointees who gain simultaneous appointments; that is to say, those who are appointed collectively on the same date or are deemed to be appointed on the same date, irrespective when they joined their posts. The position of law as discussed about could be said to be prevailing even while the High Court of Jammu & Kashmir decided by a Full Court Resolution to determine the seniority on the basis of roster points.

30. We are not inclined to carve out an exception for the 2003 appointees that is the petitioners herein before us. The High Court in our view rightly applied the principle of law explained by this Court in the case of ***Bimlesh Tanwar*** (supra).

31. There is one another important aspect of this matter, we need to take notice of. The High Court in its impugned judgment and order has observed that the appointments of the selected officers were made in terms of Rule 42 of the Jammu & Kashmir Civil Services (Judicial) Recruitment Rules 1967 vide the Government order dated 06.08.2003 that is much after the pronouncement of the judgment in the case of ***Bimlesh Tanwar*** (supra). It makes all the differences.

32. In the overall view of the matter, we are convinced that there is no jurisdictional infirmity or any other infirmity in the impugned judgment passed by the High Court warranting interference at our end

33. In the result, this petition fails and is hereby dismissed.