REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2022
(Arising out of Special Leave Petition (C) No.16161 of 2018)

Hariharan & Ors. ... Appellants

v.

Harsh Vardhan Singh Rao & Ors. ... Respondents

with

Civil Appeal No. of 2022
[Arising out of S.L.P. (C) No._____ of 2022]
[Diary No.12422 of 2022]

J U D G M E N T

ABHAY S. OKA, J.

1. Leave granted in Special Leave Petition (C) No.16161 of 2018. Delay in filing Special Leave Petition (C) Diary No.12422 of 2022 is condoned and leave is granted in the said Special Leave Petition as well.

2. In Civil Appeal arising out of SLP (C) No.16161 of 2018, the appellants who are original respondents nos.11 to 14 before the High Court of Gujarat, have challenged the judgment and order

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dated 11th May 2018 passed by a Division Bench of the High Court of Gujarat on a writ petition under Article 226 of the Constitution of India filed by respondents nos.1 to 18.

FACTUAL ASPECTS IN CIVIL APPEAL ARISING OUT OF S.L.P.(C) NO.16161 OF 2018

3. Few factual details will have to be noted. The dispute is a typical dispute between promotees and direct appointees over inter-se-seniority. Here, the dispute is about the posts of Inspectors in the Income Tax Department in the State of Gujarat. On 7th February 1986 and 3rd July 1986, Office Memoranda (for short, 'OM') were issued by the Ministry of Personnel, Public Grievances and Pension. Both the OMs record that the principle of rotation of quota will be followed for determining the inter-se-seniority of promotees and direct recruits. It is mentioned therein that when direct recruits are not available, the promotees would be bunched together at the bottom of the seniority list below the last position up to which it is possible to determine seniority on the basis of rotation of quota with reference to the actual number of direct recruits who become available. It is provided therein that the unfilled direct recruitment quota vacancies would be carried forward and added to the corresponding direct recruitment

vacancies of the next year. It is also provided that these additional direct recruits selected against the carried forward vacancies of the previous year, should be placed en bloc below the last promotee or direct recruit, as the case may be, in the seniority list based on the rotation of quota for that year. Prior to these two OMs, there was an OM dated 22nd November 1959, which provided for fixing the seniority of direct recruits and promotees based on the rotation of quota.

4. In the facts of the case, we may note here that the relevant Recruitment Rules of 1969 provided that the quota of departmental promotees and direct recruits to the posts of Inspector will be 2:1. There is no dispute that the rule of rotation of quota or rota and quota is applicable for fixing their inter-se-seniority. On 7th February 2000, Office Note was issued by the Department of Personnel and Training (for short, 'DoPT'). By the said office note, it was directed that if the examination is not held in the vacancy year, the seniority of the vacancy year cannot be granted to direct recruits. There was a further clarificatory OM issued on 3rd March 2008 by DoPT, which clarified that when the appointment against unfilled vacancies is made in subsequent years either by direct recruitment or promotion, the persons so

appointed shall not get seniority of the earlier year. However, they should be given the seniority of the year in which they were appointed on a substantive basis.

5. On 26th June 2009, the Chief Commissioner of Income Tax, Ahmedabad filled in 53 posts of Income Tax Inspectors by promotion on the basis of the recommendations of the Departmental Promotion Committee (DPC). By a communication dated 20th November 2009, the Chief Commissioner of Income Tax, Ahmedabad forwarded a requisition for making appointments to 46 direct posts (35 current and 11 carried forward) enclosing therewith the details in the prescribed proforma. The DoPT by the letter dated 15th January 2010 granted NOC for 482 vacancies in the grade of Income Tax Inspector. Accordingly, by a letter of the same date, the Department of Revenue of the Ministry of Finance forwarded the said NOC to the Secretary of the Staff Selection Commission (SSC). However, the examination for recruitment was not conducted to fill up the vacant posts of Income Tax Inspectors for the recruitment year 2009-10 in the same year. Accordingly, SSC initiated the process by holding a meeting with the officers for the conduct of the Combined Graduate Level Examination, 2010

(short, 'CGLE-2010'). The Central Board of Direct Taxes (CBDT) proposed tentative vacancies of 482 posts of Income Tax Inspectors for CGLE-2010. An advertisement was published on 30th January 2010 inviting applications for CGLE-2010. On 26th April 2010, CBDT communicated to SSC that vacancies for the recruitment year 2009-10 were included for selection through SSC CGLE-2010. On 10th May 2010 and 31st July 2010, examinations were conducted by SSC for Tier-I and Tier-II. On 27th October 2010, CBDT finally submitted 846 vacancies as confirmed vacancies to SSC. Before the said letter was addressed, the Chief Commissioner of Income Tax, Ahmedabad informed CBDT that total of 72 vacancies should be taken for the State of Gujarat. The result was declared on 7th January 2011 and SSC recommended total 822 candidates. On 27th November 2012, a decision of this Court in the case of ***Union of India & Ors. v. N.R.Parmar & Ors.***[1] was pronounced. This Court dealt with a contingency where the requisition for filling in the vacancies of direct recruits was issued in the same recruitment year and the advertisement for recruitment was published in the same recruitment year when the vacancies had arisen, but the examination could not be conducted in the same recruitment

1 2012 (13) SCC 340

year. This Court held that in such a case, the direct recruits would be entitled to seniority in the recruitment year when the requisition was made and advertisement was issued.

6. On 25th May 2014, a draft seniority list of the Income Tax Inspectors for the State of Gujarat was issued and on the basis of the draft seniority list, the final seniority list was issued on 29th May 2014. Further, on 7th September 2016, a modified seniority list of the Income Tax Inspectors in the cadre of the Gujarat region was issued. In the said list, the direct recruits of CGLE-2010 were interspaced with promotees of the year 2009-10. There were several representations made against the said seniority list by the promotee candidates. On 17th January 2018, CBDT issued a clarification stating that insofar as the fixing of inter-se-seniority of CGLE-2010 direct recruits with promotee officers was concerned, the direct recruits may be interpolated with the promotees of the same recruitment year in accordance with OMs issued on 3rd July 1986 and 4th March 2014. The said clarification was communicated by CBDT to all Principal Chief Commissioners of Income-Tax. On the basis of the said clarification, a revised seniority list dated 13th February 2018 was published. As per the said seniority list, the direct recruits

recruited against vacancies of the year 2009-10 were interspaced with the promotees of the recruitment year 2010-11. Respondents nos.1 to 18 who were direct recruits, filed a writ petition before the High Court of Gujarat for challenging the said seniority list dated 13th February 2018. A prayer was made in the writ petition for setting aside the clarification dated 17th January 2018 and the consequent seniority list dated 13th February 2018. A consequential prayer was made for restoring the seniority list dated 7th September 2016. By the impugned judgment, the seniority list dated 13th February 2018 was quashed and the seniority list of 7th September 2016 was restored with a clarification that only those direct recruits who were eligible and qualified in the recruitment year 2009-10, shall be interspaced with 53 promotees who were promoted vide DPC dated 29th June 2009.

7. On 13th July 2018, notice was issued in the Special Leave Petition no.16161 of 2018 which is the subject matter of the present Civil Appeal and by an interim order, the *status quo* as of that date was ordered to be maintained. The appellants who were respondents in the writ petition before the High Court, are the promotees who were promoted vide DPC dated 29th June 2009.

SUBMISSIONS IN BRIEF

8. Mr. Huzefa Ahmadi, the learned senior counsel appearing for the appellants firstly submitted that the decision of this Court in the case of ***N. R. Parmar***[1] has been overruled by a larger Bench of three Hon'ble Judges of this Court in the case of ***K. Meghachandra Singh & Ors. v. Ningam Siro & Ors.***[2] on 19th November 2019. However, it was clarified that the decision will apply prospectively. His submission is that a recruitment year is a calendar year and not a financial year. The learned senior counsel submitted that in the present case, the advertisement for recruitment was not issued in the year 2009 and the examination was conducted in 2010. He pointed out that in the case of ***N.R. Parmar***[1], the advertisement was issued in the same recruitment year in which vacancies arose. He pointed out that a requisition was sent on 21st January 2010 to SSC for 482 vacancies of Income Tax Inspectors for 2009-10. However, in the next requisition letter dated 22nd November 2010 which was for CGLE-2010, carried forward vacancies (482) of 2009-10 were

2 2020 (5) SCC 689

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mentioned. This requisition was made for total 844 vacancies which included even vacancies of the recruitment year 2010-11. Based on the observations made in paragraph 33 of the decision in ***N. R. Parmar's case***[1], the learned senior counsel would submit that in terms of the said decision, the vacancies arising during a particular year, should be reported in the same year and the advertisement for recruitment should also be published in the same year. He urged that in the present case, all these conditions have not been fulfilled.

9. Inviting our attention to the decision of this Court in the case of ***K. Meghachandra***[2], he submitted that now this Court has categorically held that the seniority of direct recruits will be reckoned only from the date of appointment and not from the stage when the requisition for their appointment was sent. The learned senior counsel also pointed out that CBDT by the letter dated 27th May 2019 clarified that in view of subsequent decision of the High Court of Delhi, the decision in the case of ***N.R. Parmar***[1] shall be implemented prospectively with effect from 27th November 2012. The learned senior counsel also pointed out that when there was no advertisement and no requisition issued for the vacancies of the year 2009, the vacancies of the year 2009

were combined in CGLE-2010. Therefore, relative merit of selected candidates cannot be determined for assigning the seniority in different recruitment years, the reason being that there was only one merit list of CGLE-2010. He also pointed out that the final position of vacancies was intimated to SSC for the first time by the letter dated 27th October 2010. Therefore, the direct recruits who were recruited on the basis of CGLE-2010 from the quota of earlier year, cannot be interspaced between the promotees of the year 2009. He submitted that now seniority cannot be disturbed after lapse of eleven or twelve years.

10. Mr. Nidhesh Gupta, the learned senior counsel appearing for respondents nos.1 to 5, 7, 8, 10 to 13, 15 to 18 and 29 to 39 firstly submitted that even the decision in the case of ***K. Meghachandra***[2] protects the case of the said respondents (direct appointees) as it is specifically observed that the decision will apply prospectively and it will not affect inter-se-seniority fixed on the basis of the decision of this Court in the case of ***N. R. Parmar***[1].

11. He pointed out that this Court in the case of ***K. Meghachandra***[2] held that seniority cannot be granted from the

date when the candidate was not born in the cadre. He submitted that it is a well settled position of law that the said principle does not apply when the seniority is to be determined in accordance with rotation of vacancies between direct recruits and promotees based on quota of vacancies reserved for both the categories. He relied upon the decision of a Constitution Bench of this Court in the case of ***Mervyn Coutindo & Ors. v. Collector of Customs, Bombay & Ors***[3]**.** He submitted that in the said decision, the Court upheld rotational system of fixing seniority. He submitted that attention of the Bench of three Hon'ble Judges which decided the case of ***K.Meghachandra***[2] was not invited to the case of ***Mervyn Coutindo***[3]. He would, therefore, submit that the decision of this Court in the case of ***K. Meghachandra***[2] is *per incuriam.* He submitted that the object of rotational system of fixing seniority is to blend the talent with experience and to augment the efficiency. He submitted that as held by this Court in the case of ***Hon'ble Punjab & Haryana High Court at Chandigarh v. State of Punjab & Ors.***[4], seniority has to be determined on the basis of roster and not on the basis of the date of joining of a particular stream. He pointed out that in the

3 1966 (3) SCR 600
4 2019 (12) SCC 496

judgment of this Court in the case of ***Arvinder Singh Bains v. State of Punjab & Ors.***[5], it was held that making the date of joining as the basis for determining seniority would lead to discretion in the hands of the Government and the possibility of misuse. The reason being that selection process of promotees is shorter as compared to that of direct recruits. Therefore, injustice to the direct recruits cannot be compounded by relegating them below the direct recruits.

12. He relied upon various OMs starting from OM dated 3rd July 1986 till OM dated 13th August 2021, which clearly provide for seniority to be determined according to the rotation of vacancies. The learned senior counsel submitted that though a case is sought to be made out that a recruitment year is a calendar year and not a financial year, even the appellants have proceeded on the footing that it is the financial year. He relied upon several documents in that behalf.

13. He submitted that the relevant year for determining seniority is the year in which recruitment requisition is sent. He pointed out the letter dated 20th November 2009 enclosing therewith the requisite proforma for requisition of Income Tax

5 2006 (6) SCC 673

Inspectors which clearly included 35 current and 11 carried forward vacancies of the direct appointees. He pointed out that the subsequent letter addressed to the Secretary of SSC is of 21st January 2010 which was issued in recruitment year 2009-10 itself which included vacancies of 2009-10. Even the advertisement was issued in recruitment year 2009-10, as the same was issued on 30th January 2010. He would, therefore, submit that the recruitment year in the present case was 2009-10. He submitted that segregation of vacancies for 2009-10 and 2010-11 was already done as is apparent from the seniority list dated 7th September 2016.

14. He submitted that OM dated 7th February 1986 cannot be applied and the same will apply when there is an earlier examination or selection which is followed by a subsequent examination or selection. He submitted that in the facts of the case, in the year 2009-10, there was no examination or selection conducted for direct recruits. The expression 'direct recruits do not become available' used in OM dated 7th February 1986 means that though the selection process is held during the relevant year, the candidates do not become available.

15. Lastly, he pointed out that as a matter of fact, a large number of direct recruits have been promoted since then. He submitted that as the decision of this Court in the case of ***K. Meghachandra***[2] is *per incuriam,* being contrary to the binding precedent of a larger Bench in the case of ***Mervyn Coutindo***[3], the decision in the case of ***N.R. Parmar***[1] will prevail.

16. Mr. Vikramjit Banerjee, the learned Additional Solicitor General representing the Income Tax Department and Union of India submitted that a new OM has been issued on 13th August 2021 by DoPT, clarifying that as the decision in the case of ***K. Meghachandra***[2] will have prospective operation, cases of inters-se-seniority of direct recruits and promotees shall not be disturbed during the period between the date of the decision in ***N.R. Parmar's case***[1] and the date of decision in ***K. Meghachandra's case***[2]. He submitted that in view of the said OM, the cases of inter-se-seniority between officers joined between 27th November 2012 and 18th November 2019 shall be governed by the provisions of OMs dated 7th February 1986/3rd July 1986 read with OM dated 4th March 2014. He submitted that a departmental OM dated 26th October 2021 has been issued as per OM of DoPT dated 13th August 2021.

17. He submitted that Income Tax Department is adversely affected due to the order of *status quo,* passed in this appeal, as 162 out of 486 sanctioned posts of Income Tax Officers (ITOs) are vacant. He submitted that this had drastically affected service to the taxpayers. He submitted that 109 Income Tax Inspectors are likely to be deputed for election duty of Gujarat Assembly Elections. He submitted that non-convening of DPC for ITOs is having cascading effects as there are least number of promotions in Group 'C' cadre. He submitted that if this Court is inclined to refer the question to a larger Bench, the interim order may be clarified or vacated as the functioning of the Department is really affected by the interim order.

18. The learned senior counsel appearing for the appellants, by way of rejoinder, submitted that direct recruits are selected by SSC by open examination which is conducted annually. Therefore, SSC follows the calendar year as opposed to the financial year. He submitted that as no recruitment occurred in 2009, the results of the 2010 examination will determine the seniority of carried forward candidates. He also pointed out various documents in support of his contention that a recruitment year will have to be taken as a calendar year.

CONSIDERATION OF SUBMISSIONS

19. We have carefully considered the submissions. The first issue which arises for consideration is whether the decision of this Court in ***K. Meghachandra's case***[2] is *per incuriam* or in the alternative, whether it requires reconsideration being in conflict with the decision of the Constitution Bench in the case of ***Mervyn Coutindo***[3] and the decision of a Bench of three Hon'ble Judges in the case of ***M. Subba Reddy & Anr. v. A.P. State Road Transport Corporation & Ors***[6]**.** The next issue will be assuming that the decision of this Court in ***N.R. Parmar's case***[1] stands overruled, in view of its prospective overruling, whether the inter-se-seniority of the direct recruits and the promotees in the facts of this case could be determined as per the decision in ***N.R. Parmar's case***[1]. This is in the context of the fact that the seniority was fixed after the decision in the case of ***N.R. Parmar***[1] and before 19th November 2019 i.e. when the decision in ***K. Meghachandra's case***[2] was rendered. The third issue to be decided is whether the recruitment year is a financial year or a calendar year. Lastly, a factual issue will have to be decided whether, in the facts of this case, the process of recruitment of

6 2004 (6) SCC 729

direct recruits commenced in the very recruitment year in which the vacancies arose.

THE CONCEPT OF RECRUITMENT YEAR

20. In the facts of the case, there is no dispute that as far as the posts of Income Tax Inspectors are concerned, the principle of rota and quota or rotation of quota will apply. The posts of Income Tax Inspectors are being filled in by direct recruits and promotees in the proportion already fixed. Therefore, a roster will apply where the points will be for direct recruits and promotees as per the proportion fixed. Before we go into various legal issues, which we have flagged above, it will be appropriate if we discuss the factual issues first. For the decision on the factual issues, it is necessary to decide whether the recruitment/requisition/vacancy year is the same as the financial year. The appellants have tried to contend that a recruitment year will be a calendar year. We must note here that no such case has been made out in the Civil Appeal arising out of Special Leave Petition (C) No.16161 of 2018. In the synopsis on pages F and G, the appellants themselves have referred to the financial year while referring to the vacancies available in a particular year. The appellants made a representation dated 25th November 2016 in which they described

the recruitment years as the financial years i.e 2009-10 and 2010-11. The letter dated 3rd August 2016 addressed by the Directorate of Income Tax, New Delhi to the Principal Chief Commissioner of Income Tax, Ahmedabad treats a recruitment year as a financial year. In fact, it incorporates a clarification issued by ITGOA which in turn, refers to the recruitment year on the footing that it is a financial year. The appellants have annexed as 'Annexure P-12' to reply affidavit in I.A.No.161060 of 2019, a clarification dated 7th November 2014 issued by the CBDT to All Principal Chief Commissioners of Income Tax, which refers to vacancy years as financial years right from 1986-87 till 2013-14. Along with the letter dated 3rd August 2010, the Office of the Chief Commissioner of Income Tax forwarded to the CBDT, the details of the confirmed vacancies in the post of Income Tax Inspectors as on 31st March 2011 in the prescribed proforma. In the prescribed proforma, under the column 'year' (year of vacancies), financial years 2009-2010 and 2011-2012 have been mentioned. 35 vacancies of Income Tax Inspectors have been shown against the year 2009-10. In the counter affidavit of private respondents, reliance has been placed on the OM dated 8th May 2017 issued by the DoPT. Paragraph 5 of the said OM

specifically records that in partial modification of the OMs issued on 10th April 1989, 16th June 2000 and 20th May 2014, the vacancy year may be shifted to a calendar year from the year 2018, wherever the vacancy year based on financial year was being followed. The documents on record clearly show that as far as the posts of Income Tax Inspectors are concerned, the vacancy or recruitment year was always reckoned as the financial year.

21. The appellants have placed reliance on the advertisement of CGLE-2010. We have perused the said advertisement. It does not refer to any particular recruitment or vacancy year and it does not record whether the examination is being held for the vacancies of a particular recruitment year. Reliance is also placed on the fact that CGLE is always referred to with reference to the calendar year and not the financial year. This is hardly of any relevance. SSC acts as per the requirements of the concerned department. SSC is not concerned in any manner with the recruitment year. Its job is to conduct the process of recruitment as per the instructions of the concerned department. There is material on record to show that the Income Tax Department always treated the vacancy year or recruitment year as a financial year.

22. We have, therefore, no manner of doubt that till the year 2018, in relation to the recruitment and vacancies to the posts of Income Tax Inspectors, the financial year was being treated as the recruitment year or vacancy year.

COMMENCEMENT OF THE PROCESS FOR THE RECRUITMENT YEAR 2009-10 FOR DIRECT RECRUITS

23. The letter dated 20th November 2009 addressed by the Chief Commissioner of Income Tax, Ahmedabad to an officer of CBDT, refers to the fact that there were 35 vacancies of direct recruits. The agency for recruiting direct recruits to the post of Income Tax Inspectors is admittedly SSC. The Government of India addressed a letter to the Secretary of SSC on 21st January 2010 stating that for CGLE-2009/10, approximately 482 vacancies were available. Thus, the requisition issued to SSC was for filling in 482 vacancies of the year 2009-10. The notice of CGLE-2010 was published on 31st January 2010. The last date for filing applications was 2nd March 2010. The letter dated 3rd August 2010 addressed by the Chief Commissioner of Income Tax, Ahmedabad to CBDT records that as on 31st March 2011, there will be 35 backlog vacancies for direct recruits for the year 2009-10. In this letter, it was stated that there were total 74 vacancies

for the posts of Income Tax Inspectors, out of which, 35 vacancies were of the year 2009-10. The same vacancy position has been mentioned in the letter dated 20th November 2009 referred above. The documents on record clearly indicate that these 35 posts of direct recruits for the recruitment year 2009-10 were sought to be filled in on the basis of CGLE-2010 notified on 31st January 2010 which was held on 16th May 2010. The notice of CGLE-2010 records that the last date for submitting applications was 2nd March 2010. The advertisement mentions that the applicants should be qualified as on 2nd March 2010, which is a date within the recruitment/vacancy year 2009-10. Thus, on facts, it can be concluded that the process of recruiting direct recruits to 35 posts of Income Tax Inspectors of the vacancy/recruitment year 2009-10 commenced in the same year 2009-10.

CASES OF N.R.PARMAR[1] AND K. MEGHACHANDRA[2]

24. Now, we turn to the decision in ***N.R. Parmar's case[1]***. This Court dealt with the issue of inter-se-seniority between the promotee Income Tax Inspectors and direct recruits. As noted in paragraph 9 of the decision, the controversy pertained to the vacancies for the year 1993-94. The vacancies of promotees were filled in the same year. SSC issued the advertisement in

May/June 1993 for filling in the posts of direct recruits for the year 1993-94. Though the written test was conducted in December 1993, viva-voce was conducted in October 1994. The result was declared in June 1995 and the direct recruits joined in the year 1995. The Administrative Tribunal held that the date on which the SSC made the selection of the direct recruits, will be the material date for fixing their seniority. The High Court interfered with the order of the Tribunal by passing an order of remand. Ultimately, the direct recruits succeeded before the Tribunal. The writ petitions challenging the order of the Tribunal passed on remand were filed before the High Court. The said petitions were transferred to this Court.

25. Perusal of the decision in the case of ***N.R. Parmar***[1] shows that this Court considered and interpreted OMs dated 22nd December 1959, 7th February 1986, 3rd July 1986 and 3rd March 2008. Apart from these OMs, this Court considered various Office Notes as well as correspondence. This Court held that the OM dated 3rd March 2008 has to be ignored to the extent to which the same is in derogation of OMs dated 7th February 1986 and 3rd July 1986. In paragraph 52, this Court recorded its conclusions, which reads thus:

> "**52.** Having interpreted the effect of the OMs dated 7-2-1986 and 3-7-1986 (in paras 25 to 29 hereinabove), we are satisfied, that not only the requisition but also the advertisement for direct recruitment was issued by SSC in the recruitment year in which direct recruit vacancies had arisen. The said factual position, as confirmed by the rival parties, is common in all matters being collectively disposed of. **In all these cases the advertised vacancies were filled up in the original/first examination/selection conducted for the same. None of the direct recruit Income Tax Inspectors herein can be stated to be occupying carried-forward vacancies, or vacancies which came to be filled up by a "later" examination/selection process. The facts only reveal that the examination and the selection process of direct recruits could not be completed within the recruitment year itself. For this, the modification/amendment in the manner of determining the inter se seniority between the direct recruits and promotees, carried out through the OM dated 7-2-1986, and the compilation of the instructions pertaining to seniority in the OM dated 3-7-1986, leave no room for any doubt, that the "rotation of quotas" principle would be fully applicable to the direct recruits in the present controversy. The direct recruits herein will therefore have to be interspaced with promotees of the same recruitment year.**"
>
> (emphasis added)

26. It is necessary to consider the findings rendered by the High Court in the impugned judgment. The High Court has expressly relied upon the decision of this Court in the case of ***N.R.***

Parmar[1]. By applying the said decision to the facts of the case, the High Court held that:

i. Requisition for 35+11 vacancies for direct recruits was sent to CBDT in the recruitment year 2009-10 itself;

ii. The recruitment for the said vacancies could not be held during the recruitment year 2009-10 for the reasons for which the candidates were not responsible;

iii. It is not the case that the eligible candidates for filling in the posts of direct recruits were not available in the year 2009-10;

iv. The seniority list dated 7th September 2016 which was prepared in terms of the decision of this Court in the case of ***N.R. Parmar***[1] was required to be restored with a clarification that those direct recruits who were eligible in the recruitment year 2009-10 should be interspaced with 53 promotees appointed during the year 2009-10; and

v. The seniority list dated 7th September 2016, which was the final seniority list, could not be modified without giving an opportunity of being heard to the affected

candidates. Therefore, the amended seniority list dated 13th February 2018 was illegal.

27. Now, coming to the decision of the Bench of Hon'ble three Judges in the case of ***K.Meghachandra*** [2], this Court was dealing with the Manipur Police Service Rules, 1965 (for short, 'the MPS Rules'). This Court was dealing with the issue of the dispute over the seniority in the cadre of Manipur Police Service, Grade-II Officers between the direct recruits and promotees. After referring to Rule 28 of the MPS Rules, a finding was recorded that the Rule expressly provided that the seniority shall be reckoned only from the date of appointment and not from the stage when the requisition for the appointment was issued. In paragraph 34, this Court held thus:

> "**34.** The judgment in N.R.Parmar [2012 (13) SCC 340] is now to be considered in some detail as this is heavily relied on by the appellants' counsel. **At the outset, it must however be cleared that the cited case had nothing to do with the MPS Rules, 1965 and that litigation related to the Income Tax Inspectors who were claiming benefits of various Central Government OMs (dated 22-12-1959, 7-2-1986, 3-7-1986 and 3-3-2008). The judgment was rendered in respect of the Central Government employees having their own Service Rules. The applicable Rules for the litigants in the present case however provide that the seniority in the service shall**

be determined by the order in which appointments are made to the service. Therefore, the memorandums concerned referred to in N.R. Parmar [2012 (13) SCC 340] which deal with general principles for determination of seniority of persons in the Central Government service, should not according to us, have any overriding effect for the police officers serving in the State of Manipur."

(emphasis added)

In paragraph 38, this Court held thus:

"38. At this stage, we must also emphasise that the Court in N.R.Parmar [2012(13)SCC340] need not have observed that the selected candidate cannot be blamed for administrative delay and the gap between initiation of process and appointment. Such observation is fallacious inasmuch as none can be identified as being a selected candidate on the date when the process of recruitment had commenced. On that day, a body of persons aspiring to be appointed to the vacancy intended for direct recruits was not in existence. The persons who might respond to an advertisement cannot have any service-related rights, not to talk of right to have their seniority counted from the date of the advertisement. In other words, only on completion of the process, the applicant morphs into a selected candidate and, therefore, unnecessary observation was made in N.R. Parmar [2012 (13) SCC 340] to the effect that the selected candidate cannot be blamed for the administrative delay. In the same context, we may usefully refer to the ratio in Shankarsan Dash v. Union of India [Shankarsan Dash v. Union of India, (1991) 3 SCC 47 : 1991 SCC (L&S) 800] , where it was

held that even upon empanelment, an appointee does not acquire any right."

(emphasis added)

In paragraph 39, this court observed:

"**39.** The judgment in N.R.Parmar [2012 (13) SCC 340] relating to the Central Government employees cannot in our opinion, automatically apply to the Manipur State Police Officers, governed by the MPS Rules, 1965. We also feel that N.R. Parmar[1] had incorrectly distinguished the long-standing seniority determination principles propounded in, inter alia, Jagdish Ch.Patnaik [Jagdish Ch.Patnaik v. State of Orissa, (1998) 4 SCC 456 : 1998 SCC (L&S) 1156], Suraj Parkash Gupta v. State of J&K [Suraj Parkash Gupta v. State of J&K, (2000) 7 SCC 561 : 2000 SCC (L&S) 977] and Pawan Pratap Singh v. Reevan Singh [Pawan Pratap Singh v. Reevan Singh, (2011) 3 SCC 267 : (2011) 1 SCC (L&S) 481] . These three judgments and several others with like enunciation on the law for determination of seniority makes it abundantly clear that under service jurisprudence, seniority cannot be claimed from a date when the incumbent is yet to be borne in the cadre. In our considered opinion, the law on the issue is correctly declared in Jagdish Ch. Patnaik [Jagdish Ch. Patnaik v. State of Orissa, (1998) 4 SCC 456 : 1998 SCC (L&S) 1156] and consequently we disapprove the norms on assessment of inter se seniority, suggested in N.R. Parmar [Union of India v. N.R. Parmar, (2012) 13 SCC 340 : (2013) 3 SCC (L&S) 711]. **Accordingly, the decision in N.R. Parmar[1] is overruled. However, it is made clear that this decision will not affect the inter se seniority already based on N.R. Parmar[1] and the same is protected. This decision will apply prospectively except where seniority is to be fixed under the relevant rules**

> **from the date of vacancy/the date of advertisement."**
>
> (emphasis added)

28. With the greatest respect to the Hon'ble Bench which dealt with ***K.Meghachandra's case***[2], we find that the attention of the Bench was not invited to the binding decision of the Coordinate Bench in the case of ***M. Subba Reddy***[6]. This decision was rendered by a Bench of three Hon'ble Judges. This Court in the case of ***M. Subba Reddy***[6] dealt with the issue of the fitment of the promotees to the posts of Assistant Traffic Manager and Assistant Mechanical Engineer in the integrated seniority list. The majority judgment refers to the relevant Service Regulations which provide that seniority is reckonable from the date of appointment to service or grade. Paragraphs 6 and 7 of the said decision read thus:

> **"6.** Mr Rakesh Dwivedi, learned Senior Counsel appearing on behalf of the appellants submitted that the appellants had a right to be promoted within their quota during the years 1981 to 1987, when vacancies for promotees' quota became available. During this period, no direct recruits were available. Direct recruits became available in July 1988, November 1990 and June 1992. Appellant M. Subba Reddy was regularised from 27-12-1986 vide order dated 9-9-1988, when no direct recruits were available and, therefore, it was improper for the Corporation to place direct

recruits above the promotees. **It is the case of the appellants that the direct recruits cannot claim appointments from the date of the vacancy in their quota before their selection.** It has been contended that Item 3 of Annexure 'A' (Section B) prescribes the method of recruitment in the manner in which vacancy is allocated. According to the learned counsel it does not involve rota for the purposes of seniority. It prescribes only quota, therefore, rota cannot be implied. It was urged that seniority is dealt with only by Regulation 3 of the Service Regulations, 1964 and not by Regulation 34 of the Recruitment Regulations, 1966. Reliance was placed in this connection on Regulation 34 as amended on 15-9-1995. It was submitted that in view of the said amendments, Annexure 'A' refers to only allocation of vacancy and not for determination of seniority. It was to be determined only by Regulation 3 of the Service Regulations. **The non-availability of candidates in a particular category, it was urged, may be on account of ban on recruitment or on any other ground. Therefore, in the present case, where promotees were regularised in the promotion quota when direct recruits were not available, the quota in Item 3(1) of Annexure 'A' will not apply. It was submitted that in any event, allocation of vacancy under the said clause was not rigid and it cannot be a basis for denying seniority to the promotees from the date of regularisation.** Reliance was placed on the judgment of this Court in the case of Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra [(1990) 2 SCC 715 : 1990 SCC (L&S) 339 : (1990) 13 ATC 348 : AIR 1990 SC 1607].

7. We do not find any merit in the above arguments. The appellants have not challenged the validity of the above regulations. As stated above, it has been contended before us on behalf of the appellants that Item 3(1) of Annexure 'A'

(Section B) prescribes method of recruitment and the manner in which vacancy is to be allocated, which does not involve rotation for the purposes of seniority; that Item 3(1) of Annexure 'A' (Section B) prescribes only quota and rota cannot be implied. **However, the appellants before the High Court unequivocally submitted that under the above regulations, promotions and direct recruitments were required to be made in the ratio of 1:1 and that the said regulations provided for a cycle in which vacancies were to be rotated.** (See affidavit of M. Subba Reddy dated 28-12-1994.) **In the said affidavit, it is further submitted that in the absence of direct recruits, the slots reserved for direct recruits were liable to be adjusted with the promotees immediately and subsequently arrived direct recruits should be given their positions in the seniority list subsequently in a bunch. In our view, the averments of the appellants before the High Court, if accepted, would result in complete violation of the quota-and-rota rule embodied in the above regulations, which cannot be permitted.** As stated above, the appellants were promoted originally subject to the conditions envisaged in Regulation 34 and, therefore, they cannot claim seniority by ignoring the said regulations and on the basis of their officiating services. They were promoted temporarily under Regulation 30 which provides for ad hoc promotions. Regulation 34 ensures induction of qualified direct recruits. But for Regulation 34, candidates from feeder posts would be temporarily promoted to the slots reserved for direct recruits and on their regularisation, the quota prescribed for direct recruits will be defeated. Regulation 34 has been enacted to protect quota prescribed for direct recruits. As stated above, Regulation 3 of the Service Regulations has to be read with Regulations 30 and 34 of the said Recruitment Regulations. The appellants were promoted on temporary basis

under Regulation 30 with the clear understanding that the period of officiation will not give them any right over direct recruits in future. It is for this reason that Regulation 30(6) states that if a temporary promotee is subsequently promoted in accordance with the regulations, his probation will commence in the higher category only from the date of subsequent promotions. For the same reason, Regulation 34 states that revertees shall be subsequently considered for repromotion against the quota of vacancies reserved for being filled by promotion. Therefore, Regulation 34 protects the quota prescribed for direct recruits. **On reading Regulation 3 of the Service Regulations with Regulations 30 and 34 of the Recruitment Regulations, it becomes clear that neither the date of promotion nor the date of selection is the criterion for fixation of seniority. The fixation of seniority under the above regulations depends upon the number of vacancies falling in a particular category. Therefore, the rule of rota is inbuilt in the quota prescribed for direct recruits and for promotees in terms of Item 3 of Annexure 'A' (Section B) to the Recruitment Regulations. In the present case, the above regulations prescribe a quota of 1:1, which leads to rota for confirmation. The fixation of seniority under the above regulations depends upon the number of vacancies against which promotees became due for promotion.** In the case of Devendra Prasad Sharma v. State of Mizoram [(1997) 4 SCC 422 : 1997 SCC (L&S) 1053] Rule 25(iii) stated that the relative seniority of direct recruits and of promotees shall be determined according to rotation of vacancies between direct recruits and promotees based on the quota of vacancies reserved for direct recruitment and promotion. Rule 25(iii) is similar to Item 3(1) of Annexure 'A' (Section B). **It was held by this Court that in cases where there is rotation of vacancies between direct recruits**

and promotees based on quota of vacancies, the rotation has to be considered in accordance with the vacancies as and when they accrue under the rules. Therefore, the quota rule needs to be strictly adhered to, if not, it would lead to absurdity. If the contention of the appellants is accepted, it would mean that the entire group of direct recruits will have to be placed below the entire group of promotees. We are of the opinion that having fixed the quota between the two sources of recruitment, there is no discretion with the Corporation to alter the quota or to deviate from the quota. In the circumstances, there is no merit in the argument of the appellants that Item 3(1) of Annexure 'A' (Section B) prescribes only quota and not rota and that the said item was not for determination of seniority. In the case of S.G. Jaisinghani v. Union of India [AIR 1967 SC 1427] this Court held that having fixed the quota between two sources of recruitment, it is not open to the Government to alter the quota or to deviate from the quota. In the case of Union of India v. S.D. Gupta [(1996) 8 SCC 14 : 1996 SCC (L&S) 811 : AIR 1996 SC 3325] the respondents were promotee Extra Assistant Directors (Class III) in Central Water Commission Engineering Class I Service. The Recruitment Rules were made w.e.f. 15-10-1965. In the earlier litigation, the Tribunal found that one Shri V.P. Misra, Extra Assistant Director was promoted on ad hoc basis on 31-3-1978 and he was required to be confirmed with effect from the date on which vacancy was available to him in the quota of promotees. The vacancy had admittedly arisen in the quota of promotees on 3-5-1979. Shri V.P. Misra was fitted in that vacancy. While doing so, the Department applied the principle of rota and quota and determined the inter se seniority of promotees and direct recruits. Consequently, the promotees were pushed down in the order of seniority which led to the second

> round of litigation. The question which arose for determination before this Court was whether fitment of seniority determined by the Department was in accordance with the rules. The Court found that 60% of the vacancies were to be filled by direct recruits and 40% by promotees. Among the 40% quota, there was a further demarcation in the ratio of 25% and 15% between promotees and transferees. Admittedly, the promotees were entitled to their fitment within 25% quota. Vacancies for the promotees had arisen on 3-5-1979 and, therefore, V.P. Misra was entitled to that vacancy which arose on that date. However, as stated above, in the integrated list, the promotees were pushed down. **It was contended on behalf of the promotees that the direct recruits were not borne in the service when the promotees were promoted and equity requires that the promotees cannot be pushed down. This Court rejected the said argument by observing that the object of direct recruitment is to blend talent and experience. So long as the system continues, consequences are inevitable. Although the direct recruits were recruited later, their fitment in the order of seniority had to be determined with reference to rota and quota prescribed under the rules. In such a case, there was no illegality even when promotees were pushed downwards in the order of seniority.** In our view, the judgment of this Court in S.D. Gupta case [(1996) 8 SCC 14 : 1996 SCC (L&S) 811 : AIR 1996 SC 3325] squarely applies to the facts of the present case."
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> (emphasis added)

It was held that although certain direct recruits were recruited subsequent to the promotees, their fitment in the order of seniority had to be determined with reference to rota and quota

or 'rotation of quota' prescribed under the Rules. It was held that there was no illegality when the promotees were pushed downwards in the order of seniority. This Court quoted with approval its earlier judgment in the case of ***Union of India & Ors. v. S.D. Gupta & Ors***[7]**.** In this case, by applying the principle of rota and quota, the inter-se-seniority of the promotees and direct recruits was fixed. This Court, in the said case, held that though direct recruits were recruited subsequent to the appointment of promotees, the fitment of direct recruits and promotees must be determined with reference to the rota and quota prescribed. In paragraph 8, this Court dealt with an argument that the direct recruits were not born in the service when the promotees were promoted and therefore, the promotees should not be pushed down. In paragraph 8, this Court held thus:

> "**8.** It is then contended that the direct recruits were not born in the service when the promotees were promoted and equity requires that they cannot be pushed down. **The object of direct recruitment is to blend talent and experience to augment efficiency when direct recruits, though came from green pastures, were imbued with dedication and honesty. So long as system continues, consequences are inevitable. The question of equity does not arise.** Shri Krishnamani then contended that

7 1996 (8) SCC 14

> direct recruits are shown temporary and so they cannot be similar to promotee substantive appointees. The quota of 60% of direct recruits is to substantive vacancies, though their initial appointment is temporary; on completion of period of probation they become substantive appointees. That is the settled principle of law in this behalf. The Tribunal, therefore, is not right in giving direction to consider their fitment vis-à-vis the order passed by this Court in their quota above the direct recruits."
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> (emphasis added)

29. Now, we turn to the decision of the Constitution Bench in the case of ***Mervyn Coutindo***[3]. This Court decided a petition under Article 32 of the Constitution of India filed by the Appraisers in the Customs Department. The Constitution Bench noted that the system which prevailed for recruitment to the posts of Appraisers was that 50% of posts were reserved for direct recruits and the remaining 50% were filled in by promotion from sub-ordinate officers in the Customs Department. The contention raised in the petition was that this system had resulted in discriminatory treatment to the promotees in as much as the promotees who had rendered much longer service in the cadre of Appraisers were put in seniority below the direct recruits with much shorter service. There was one more grievance in the petition with which we are not concerned. The Apex Court referred to the circular/OM dated 12th September 1959 which is

referred in the OMs dated 7th February 1986 and 3rd July 1986. After considering the submissions, the Constitution Bench held thus:

> **"6.** Before we come to what has been done in 1963 in the matter of fixing seniority of Appraisers, we may refer to two other circulars. The first is a circular of the Board issued in 1953. That circular in our opinion has nothing to do with the question of fixing of seniority as between direct recruits and promotees. Its main value is that it emphasises that the proportion fixed for direct recruits and promotees should be rigidly maintained. It also directs that promotion to higher grades should be made on the basis of a combined seniority list of both direct recruits and promotees. Then there is another circular of 1955. **That circular again emphasises the rotational system and says that it has been decided that "inter se seniority of direct recruits and promotees in the grade of Appraisers should be determined in the order in which the vacancy in that grade is filled by a direct recruit or by a promotee according to the quota fixed for such appointments". Stress has been laid on behalf of the petitioners on the words "is filled" in this circular, and it is urged that this means that until the direct recruit is actually recruited and fills the vacancy meant for a direct recruit he cannot get seniority from before the date he fills the vacancy merely on the ground of rotational system of fixing seniority. We do not think that this is the meaning of the words "is filled" used in this circular. We have already said that this circular also emphasises the rotational system in the matter of fixing of seniority and all that it means is that vacancies should be filled either by direct recruits or by promotees according to the quota fixed for such appointments.**

7. This brings us back to the circular of 1959, and the main question in that connection is the meaning to be assigned to the words "seniority determined accordingly", in the explanation to principle 6 relating to relative seniority of direct recruits and promotees. **As we read these words, their plain meaning is that seniority as between direct recruits and promotees should be determined in accordance with the roster, which has also been specified, namely, one promotee followed by one direct recruit and so on. Where therefore recruitment to a cadre is from two sources, namely, direct recruits and promotees and rotational system is in force, seniority has to be fixed as provided in the explanation by alternately fixing a promotee and a direct recruit in the seniority list. We do not see any violation of the principle of equality of opportunity enshrined in Article 16(1) by following the rotational system of fixing seniority in a cadre half of which consists of direct recruits and the other half of promotees, and the rotational system by itself working in this way cannot be said to deny equality of opportunity in government service. The anomalies which have been referred to in the petition arise not on account of there being anything opposed to equality of opportunity in government service by the use of the rotational system; they arise out of the fortuitous circumstance that in this particular service of Appraisers, for one reason or another, direct recruitment has fallen short of the quota fixed for it. It is merely because of this fortuitous circumstance that anomalies to which reference has been made in the petition have arisen. There is no doubt that if direct recruitment had kept pace with the quota fixed therefor there would have been no anomalies in fixing the seniority list.** The question therefore narrows down to this: Can it be said that there is denial of equality of opportunity

> which arises out of this fortuitous circumstance and which is not a vice inherent in the rotational system? We are not prepared to say that the rotational system of fixing seniority itself offends equality of opportunity in government service. Any anomalies which may have resulted on account of insufficient recruitment of direct recruits in the past cannot in our opinion be a ground for striking down the rotational system, which, as we have said, does not itself amount to denial of equality of opportunity in the matter of employment in government service. **It is regrettable that some anomalies have appeared because of insufficient recruitment of direct recruits in the past in this particular service. But that in our opinion can be no reason for striking down the seniority list prepared in 1963 which is undoubtedly in strict accordance with the rotational system based on the fixed quotas for recruitment of direct recruits and promotees. The order of the Board of 1963 on the basis of which the impugned seniority list of Appraisers has been prepared clearly lays down that "the principle of determination of seniority of the direct recruits and the promotees inter se in the prescribed ratio of 1:1 should be worked out". This order is in accordance with the circular of 1959 and as we have said already, there is no inherent vice in the principle of fixing seniority by rotation in a case where a service is composed in fixed proportion of direct recruits and promotees."**
>
> (emphasis added)

30. The argument made before us is that the decision in the case of ***K. Meghachandra***[2] will have to be ignored on the ground that it is *per incuriam* as the attention of the Bench which

decided the case was not invited to the binding decisions of the Constitution Bench in the case of ***Mervyn Coutindo***[3] and a Coordinate Bench in the case of ***M. Subba Reddy***[6]. Prima facie, we find substance in the argument that the attention of the Bench which decided the case of ***K. Meghachandra***[2] was not invited to the aforesaid binding precedents. Therefore, we are of the view that the appropriate course of action will be to refer the question to a larger Bench. We are dealing with a case where the 'rotation of quota' or rota and quota system is being followed. If the promotees are recruited in the relevant recruitment year, but the process of recruitment of the direct recruits which commenced in the same recruitment year could not be completed in the same year, the direct recruits appointed subsequently will have to be interspaced between the promotees of the same recruitment year. In such a case, it cannot be said that direct recruits were not available during the recruitment year. Their appointment could not be made during the same year, though the process of appointment commenced in the same year. But, if the process of recruitment of the direct recruits is completed in the same recruitment year but an adequate number of candidates could not be selected, the shortfall should be carried forward to

the next recruitment year. In such cases, the candidates who are selected against shortfall vacancies will have to be bunched below the promotees of the earlier years. Unless such a procedure is followed, the rotation of quota system will be defeated.

31. Coming to the facts of the case, though process of recruitment of direct recruits to the post of Income Tax Inspectors commenced in the recruitment year 2009-10, the same could not be completed in the same recruitment year. This is not a case where an adequate number of direct recruits could not be recruited even though the recruitment was done in the recruitment year itself. In this case, those who were eligible for direct recruitment were deprived of the opportunity as the process of recruitment could not be completed during the same recruitment year 2009-10 due to no fault on their part. The documents annexed to the counter affidavit show that the segregation of vacancies for 2009-10 and 2010-11 has been properly made.

32. In any event, the decision in the case of ***K. Meghachandra***[2] has a prospective operation. The seniority list of 7th September 2016 was made in terms of the decision in the case of ***N. R.***

Parmar[1]. Hence, the same could not have been altered on 13th February 2018 when the said decision was in force.

33. Thus, our conclusion can be summarised as under:

i. The decision in the case of ***K. Meghachandra***[2] requires reconsideration by a larger Bench in view of the fact that the binding decision of a Constitution Bench in the case of ***Mervyn Coutindo***[3] and another binding decision of a Coordinate Bench in the case of ***M. Subba Reddy***[6] were not placed for consideration before the Bench which decided the case of ***K. Meghachandra***[2] ;

ii. Even assuming that the case of ***K. Meghachandra***[2] was correctly decided, paragraph 39 of the decision shows that the decision in the case of ***N.R. Parmar***[1] has been prospectively overruled by observing that the decision will not affect the inter-se-seniority already fixed on the basis of the case of ***N.R. Parmar***[1] and the same was protected. It is also held that the decision will apply prospectively except where seniority is to be fixed under the relevant Rules from

the date of vacancy / the date of advertisement. In this case, as on the date when the case of ***N.R. Parmar***[1] was decided, there was no rule which required that the inter-se-seniority of direct recruits and promotees to the post of Income Tax Inspectors should be fixed from the date on which a person is born in the cadre. In the facts of the case, the seniority list was correctly published on 7th September 2016 in terms of the decision in the case of ***N.R. Parmar***[1] by interspacing those direct recruits who were eligible in the recruitment year 2009-10 and were appointed against the vacancies of the said year with 53 promotees who were promoted vide DPC dated 29th June 2009. The seniority list was later on modified on 13th February 2018 without giving an opportunity of being heard to the affected direct recruits.

34. At this stage, we may note here the factual aspects stated in the affidavit dated 12th October 2022 filed by Shri Anurag Chandra, Deputy Commissioner of Income Tax in the Office of the Principal Chief Commissioner of Income Tax, Gujarat. The

affidavit refers to the interim order dated 13th July 2018 in the Civil Appeal arising out of S.L.P. (C) No.16161 of 2018, by which status quo as of that date with respect to the posts held, was ordered to be maintained. The affidavit notes that as a result of the interim order, the promotion to the cadre of Income Tax Officers from the cadre of Income Tax Inspectors could not take place. As a result, 33.33% of posts in the cadre of Income Tax Officers are vacant as the same cannot be filled in. As noted earlier, the decision in the case of ***K.Meghachandra***[2] applies prospectively i.e. from 19th November 2019. Prima facie, the seniority fixed based on the decision in the case of ***N.R. Parmar***[1] has to be given effect. Therefore, while we are recommending a reference to a larger Bench, interim relief will have to be vacated and seniority will have to be fixed on the basis of the impugned judgment, subject to the final outcome of the appeal or the decision of the larger Bench, as the case may be.

35. Hence, we pass the following order:

i. We are of the considered view that the following questions need to be decided by a larger Bench of five Hon'ble Judges:

a. Whether the decision in the case of ***K. Meghachandra***[2] can be said to be a binding precedent in the light of the law laid down by the Constitution Bench in the case of ***Mervyn Coutindo***[3] and the law laid down by a Coordinate Bench in the case of ***M. Subba Reddy***[6]?

b. In absence of specific statutory rules to the contrary, when the 'rotation of quota' rule is applicable, whether the seniority of direct recruits who were recruited in the recruitment process which commenced in the relevant recruitment year but ended thereafter, can be fixed by following 'rotation of quota' by interspacing them with the direct recruits of the same recruitment year who were promoted earlier during the same year?

ii. We direct the Registry to place this petition before Hon'ble the Chief Justice of India for appropriate orders.

iii. The interim relief granted on 13th July 2018 stands vacated. Effect shall be given to the impugned judgment subject to the final outcome of this appeal or reference, as the case may be. We also clarify that the seniority of promotees and direct recruits who may be appointed

hereafter will be subject to the final outcome of the decision of this appeal or the decision in reference, as the case may be. Accordingly, concerned persons shall be informed in writing by the Income Tax Department.

36. In the Civil Appeal arising out of Special Leave Petition (C) Diary No.12422 of 2022, the challenge is to the judgment and order dated 6th February 2018 passed by the High Court of Judicature at Patna which follows the decision in the case of ***N.R. Parmar***[1] dealing with the issue of appointment of Income Tax Inspectors pertaining to the recruitment year 2009-10. This appeal be heard along with the main appeal.

.....J.
(S. Abdul Nazeer)

.....J.
(Abhay S. Oka)

New Delhi;
December 14, 2022.

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