2026 INSC 759

NON-REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3070 OF 2024

THE STATE OF UTTARAKHAND ... APPELLANT

VERSUS

JAGDISH CHANDRA KANDPAL & ORS. ... RESPONDENTS

WITH

CIVIL APPEAL NO. 3072 OF 2024

CIVIL APPEAL NO. 4452 OF 2024

AND

CIVIL APPEAL NO. 3071 OF 2024

J U D G M E N T

ALOK ARADHE, J.

1. These appeals arise from the impugned final judgment and order dated 08.08.2019 passed by the High Court[1] in Writ Petition (S/B) No. 68 of 2013. In order to appreciate the grievance of the appellants, relevant facts necessary for deciding these appeals are set out below.

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Reason:

[1] **The High Court of Uttarakhand at Nainital**

FACTS

2. These batch of Civil Appeals involve the question of entitlement of the promotees to count their *ad hoc* service for the purposes of computing seniority. On 17.02.2006, the Uttaranchal Civil Services (Executive Branch) Rules, 2005 (hereinafter referred to as 'the Rules') were notified. The respondent nos. 3 to 6 in Civil Appeal No. 3072 of 2024 (hereinafter referred to as 'the promotees') were originally appointed on the post of Naib Tehsildars. On 01.07.2007, the promotees were confirmed on the post of permanent Tehsildars by way of regular promotion. The Departmental Promotion Committee (hereinafter referred to as 'the DPC') was constituted which held its meeting on 12.09.2007 and took note of the acute shortage of Civil Service Officers in the State. In the aforesaid meeting of the DPC it was noted that the process of direct recruitment was time consuming and the only option was *ad hoc* promotion. The DPC recommended 10 Tehsildars, including the promotees for promotion to the post of Deputy Collector on *ad hoc* basis.

3. The promotees, on 01.10.2007, were promoted to the post of Deputy Collector as stop-gap arrangement/temporary

arrangement till the posts are filled by the Commission[2] by direct recruitment. The Additional Secretary of the State Government on 06.12.2007 forwarded a requisition for regular promotion highlighting the vacancies in the cadre of Deputy Collector. On 21.05.2008, the Commission sought information about filling up the posts of Deputy Collectors by promotion.

4. The appellants in the Civil Appeal No. 3072 of 2024 (hereinafter referred to as the 'direct recruits') in pursuance of an advertisement dated 26.12.2004 issued by the Commission for direct recruitment for the posts of Deputy Collector were selected and appointed in the month of August 2009.

5. The Commission by a notification dated 08.04.2010 promoted 15 permanent Tehsildars to the post of Deputy Collectors. Being aggrieved, by non-inclusion of their names in the aforesaid order, the promotees filed the Writ Petition No. 113 of 2010. The said writ petition was disposed by an order dated 27.04.2011 directing the Commission to review the promotion of permanent Tehsildars to the post of Deputy Collectors. Thereupon, the Commission issued a proceeding on 07.05.2012 by which promotees were promoted to the post of Deputy Collector with effect from 07.05.2012.

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[2] **The Uttarakhand Public Service Commission**

6. Being aggrieved, by the aforesaid order, which was made effective from 07.05.2012 instead of 01.10.2007, the promotees filed a writ petition namely, Writ Petition (S/B) No. 68 of 2013 seeking regular promotion to the post of Deputy Collector with effect from 01.10.2007 and to delete the condition of putting the promotees on probation for a period of two years. The direct recruits filed an application seeking impleadment in the writ petition, which was allowed.

IMPUGNED JUDGMENT

7. The High Court *vide* impugned judgment dated 08.08.2019 *inter alia* took note of the Rule 24(4) of the Rules and Regulation 5(a) of the Uttaranchal Public Service Commission (Limitations of functions) Regulations, 2003 (hereinafter referred to as '2003 Regulations') which stipulate that, in case, a person continues in a higher post either in a temporary or officiating basis for a period of more than one year, then approval of the Commission shall be obtained. It was held that the State Government cannot be permitted to take advantage of its own wrong for failing to refer the matter to the Commission in terms of Regulation 5(a) of the 2003 Regulations. It was further held that the promotees continued as Deputy Collectors on a temporary/officiating basis and continued

to discharge the duties till they were regularly promoted as Deputy Collectors by order dated 07.05.2012.

8. It was also held, that when the Rule authorised the Commission to approve an earlier irregular promotion, it was obligatory on the part of the State to refer the issue of irregular/*ad hoc* appointment of the promotees to the Commission for its approval and since the State had not done so, it could not take away the right conferred on the promotees by the Rules.

9. The High Court found that, since the issue of whether or not there were sufficient vacancies in the promotee quota to the post of Deputy Collectors till 2007-2008, was disputed, the same should be left for examination by the State Government. It was, therefore, directed that, in case, it is found that there were vacancies of Deputy Collector in the quota of promotees during the year 2007-2008, the promotees shall be held entitled to the benefit of regular appointment with effect from 01.10.2007, that is, the date of their initial appointment till the date of regular appointment by way of promotion. The State Government was directed to take necessary steps to revise the seniority list of Deputy Collectors and the entire exercise was directed to be concluded within a period of four months. Accordingly, the writ petition was disposed of.

10. Being aggrieved, the State Government has filed Civil Appeal No. 3070 of 2024 whereas Civil Appeal Nos. 3072 of 2024 and 4452 of 2024, have been filed by the Direct Recruits. Civil Appeal No. 3071 of 2024 has been filed by the promotees.

SUBMISSIONS

11. Mr. A.N.S. Nadkarni, learned senior counsel for the State in C.A. No. 3070 of 2024 and Mr. P.S. Patwalia, learned senior counsel for the appellants in Civil Appeal No. 3072 of 2024, submitted that the promotees are not entitled to count their ad hoc services for computing seniority, as the initial appointment of the promotees was ad hoc and was made as stop-gap arrangement and not according to the Rules. It is submitted that the Rules provide for appointment by promotion to the post of Deputy Collector in consultation with the Commission as per Public Service Commission (Procedure) Rules, 1970 (1970 Rules) and eligibility list has to be forwarded by the State Government to the Commission, which conducts the selection. It is contended that the Rules do not provide for constitution of the DPC. However, the *ad hoc* promotions of the promotees have been recommended by the DPC dehors the Rules.

12. It is urged that, on the day when the *ad hoc* promotions to the posts of Deputy Collector were made, only four posts in the promotion quota were left and, therefore, the promotees were promoted in excess of their quota. It is, therefore, contended that their *ad hoc* appointments were contrary to the proviso to Rule 24(4) of the Rules, were not made from a list prepared in accordance with statutory procedure and the *ad hoc* appointments continued beyond the permissible period. It is submitted that the promotees were promoted as Deputy Collectors immediately after their appointment as Tehsildars without undergoing the requisite probation of two years. It is urged that seniority has to be counted from the date of substantive appointment. It is pointed out that the issue involved in these appeals is squarely covered by the decision of this Court[3]. In support of the aforesaid submissions, reliance has been placed on the decision of this Court[4].

13. Leaned counsel for the appellants in Civil Appeal No. 4452 of 2024 has adopted the submissions made by the learned senior counsel for the State as well as learned senior counsel in Civil Appeal No. 3070 of 2024.

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[3] **Vinod Giri Goswami & Ors.** v. **State of Uttarakhand & Ors., (2020) 13 SCC 161**
[4] **State of West Bengal & Ors.** v. **Aghore Nath Dey & Ors., (1993) 3 SCC 371**

14. Ms. Anu Gupta, learned counsel for the appellants (direct recruits) in Civil Appeal No. 4452 of 2024 has placed reliance on Regulation 5(a) of the 2003 Regulations and has submitted that controversy involved in these batch of appeals is covered by decision of this Court in **Vinod Giri Gowswami** (supra).

15. On the other hand, Mr. Nidhesh Gupta, learned senior counsel for the appellants in Civil Appeal No. 3070 of 2024 while inviting the attention of this Court to various documents on record namely, Annexure-P-4 dated 06.12.2007, Annexure P-5 dated 26.12.2007, Annexure P-7 dated 29.04.2008, Annexure P-9 dated 1.2.2010 and Annexure P-13 dated 16.04.2012 has contended that 19 vacant posts of Deputy Collector were available for promotion and, therefore, promotees have been promoted within their prescribed quota and their appointments were subsequently approved by the Commission. It is contended that consultation with the Commission is not mandatory and the promotees were promoted to the posts of Deputy Collector in accordance with the requirement contained in proviso 24(4) of the Rules.

16. It is urged that the High Court erred in not appreciating that 15 vacancies were available in the quota of promotees for the post of Deputy Collector for the year 2007-2008 and wrongly left the question of availability of vacancies in promotees quota for

determination by the State Government. In support of the aforesaid submissions, reliance has been placed on the decisions of this Court[5].

17. Mr. Praveen Swarup, learned counsel for respondent no. 5 (direct recruit) in C.A. No. 3070 of 2024, has submitted that the appointments of the promotee by way of ad hoc promotion to the post of Deputy Collector was made dehors the Rules and the period of *ad hoc* promotion cannot be counted for the purpose of seniority.

18. Ms. Mahalaxmi Pawani, learned senior counsel for the applicants and Mr. Prashant Kumar Umrao in I.A. No. 105436 of 2025 in C.A. No. 3070 of 2024 submitted that the decision of this Court in **Vinod Giri Goswami** (supra) is distinguishable and has no application to the facts of the case. It is contended that seniority has to be counted from the date of appointment and the applicants who were appointed from the promotee quota were subsequently regularly promoted with effect from 30.06.2016 and are entitled to seniority from the date of their initial *ad hoc* appointment. Learned counsel for the applicants in I.A. No. 144105 in C.A. No. 3070 of 2024, have adopted the submissions made by learned senior

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[5] State of Uttar Pradesh v. **Manbodhan Lal Srivastava, (1957) 2 SCC 759; P. Rammohan Rao** v. **K. Srinivas & Ors., (2025) 4 SCC 127.**

counsel for the applicants in I.A. No. 105436 of 2025 in C.A. No. 3070 of 2024.

19. Mr. V. Chitambaresh, learned senior counsel for the applicants in IA. No. 105436 of 2025 in C.A. No. 3070 of 2024, submitted that *inter se* dispute between the direct recruits and promotee Deputy Collectors is not settled by the decision of this Court in **Vinod Giri Goswami** (supra) as the aforesaid decision related to rival claims of *inter se* seniority arising out of appointments and promotions made in the year 2004. It is submitted that the applicants have been appointed on temporary/officiating basis on 02.06.2012, 08.06.2012 and 09.07.2013 and have been regularly appointed as Deputy Collectors with effect from 30.06.2016.

20. We have considered the rival submissions made on both sides.

RELEVANT RULES

21. The recruitment to the post of Deputy Collector is governed by the Rules. In the Rules, two sources of recruitment for filling up the posts are recognized namely, by direct recruitment and promotion to the extent of 50% each. The cadre of Deputy Collector comprises of 80 posts out of which 40 posts are to be filled up by Direct Recruitment whereas remaining 40 posts are to be filled by promotion from the cadre of Tehsildar. Rule 3(i) of the Rules

defines the expression 'substantive appointment' which reads as follows:

> "3(i) "Substantive appointment" means an appointment not being an ad hoc appointment, on a post in the cadre of the service and made after selection in accordance with the rules and, if there are no rules, in accordance with the procedure prescribed for the time being by executive instruction issued by the Government;"

22. Rule 24(1) of the Rules enables the appointing authority to make appointment on temporary or *ad hoc* basis according to the list prepared under sub-rule (1). Rule 24(1) of the Rules provides that appointment by promotion shall be made on the basis of list prepared under Rule 16 of the Rules, which has to be prepared on the basis of merit determined in accordance with 1970 Rules. In case no candidate is available according to the list prepared under Rule 24(1) of the Rules, appointments can be made on an *ad hoc* basis from amongst the qualified candidates. Such appointments can be made only for a period of one year.

23. A person who is promoted on a temporary basis and whose appointment is subsequently approved by the Commission is conferred a benefit under the proviso to sub-rule (4) of Rule 24 of the Rules to claim the entire continuous *ad hoc* service rendered by him on a post within the promotee quota. Rule 24(4) of the Rules

which is relevant for the purposes of the controversy involved in these appeals is extracted below for the facility of reference:

> "24(4)-The appointing authority can appoint under provision of sub-rule (1) as temporary or ad-hoc basis according to the list which prepared under provision sub-rule (1). If there are not available any candidate according to the list then under the rule among the qualify candidate can be appointed. Such appointment for the more than one year or under this rule after the next selection which come first, there according the Uttaranchal Public Service Commission Regulation, 2003, Rule 5 (a).....
>
> Provided that where a person was promoted and his promotion is subsequently approved by the Commission, the entire continuous officiating service rendered by him on a post within the promotee quota shall be taken into consideration for the purpose of this Rule. If in any year of recruitment appointment is made both by direct recruitment and by promotion, names shall be arranged in accordance with the cyclic, referred to in Rule 19."

24. Rule 24(4) of the Rules makes a reference to Regulation 5(a) of the 2003 Regulations. Regulation 5(a) of 2003 Regulations, which is relevant for adjudication of the issue involved in these appeals is extracted below for the facility of reference:

> "5(a) When a temporary or officiating appointment is to be made by direct recruitment by the Governor or an authority other than the Governor to a permanent or

> temporary post which falls within the purview of the Commission, if the person to be appointed is not likely to hold the post for a period of more than one year; provided that the person thus appointed shall not hold the post in question for a total continuous period of more than one year without the Commission being consulted."

Thus, the Regulation 5(a) of the 2003 Regulations implies that in case a person continues in officiating capacity for a period of more than one year, the Commission shall be consulted, and such a person shall not hold the post for a total continuous period of more than one year without the Commission being consulted.

ISSUES

25. The issues which arise for consideration in these appeals are as follows: - (i) Whether Regulation 5(a) of 2003 Regulations was complied with, if not, the effect of non-compliance, and (ii) Whether promotees are entitled to the benefit of proviso to Rule 24(4) of the Rules?

ANALYSIS

ISSUE NO. (i) – WHETHER REGULATION 5(a) of 2003 REGULATIONS, COMPLIED WITH, IF NOT, THE EFFECT OF NON-COMPLIANCE

26. The promotees were appointed on *ad hoc* basis as Deputy Collectors on 01.10.2007 and had continued for a period of more

than one year. Regulation 5(a) of 2003 Regulations provides that if a person continues in an officiating appointment for a period of more than one year, then such officiating appointment shall not continue for a total continuous period of more than one year without the Commission being consulted. In the instant case, there is no material on record to indicate that the Commission was consulted regarding extension of the term of appointment of the promotees by way of *ad hoc* promotion to the post of Deputy Collector beyond a period of one year.

27. The Regulation 5(a) of the 2003 Regulations contains the expression 'shall'. Therefore, we have to ascertain whether the requirement of consultation with the Commission as contained in Regulation 5(a) of 2003 Regulations is mandatory.

28. The Privy Council in ***Montreal Street Railway Co.*** v. ***Normandin***[6] laid down the classic test for deciding whether a statutory requirement is mandatory or directory: where a provision concerns the performance of a public duty, and treating an act done in breach of that duty, as void would cause serious general inconvenience or injustice to persons who have no control over the authority responsible for the duty, without correspondingly

[6] **1917 AC 170 PC**

advancing the object the provision was meant to serve, the provision has to be read as directory only. Its breach may attract other consequences, but it does not invalidate the act done. The aforesaid decision was applied by Federal Court in ***Biswanath Khemka*** v. ***The King Emperor***[7] and it was held that even though provision which required consultation between the public authorities before magisterial powers could be conferred or enhanced, used emphatic prohibitory language, has to be treated as directory and non-compliance with requirement of consultation did not invalidate an appointment that was otherwise regular and valid.

29. This line of reasoning was carried forward, and applied directly to a Public Service Commission consultation requirement, by this Court in **Manbodhan Lal Srivastava** (supra). In the said decision, the requirement of consultation with the Public Service Commission under Article 320(3)(c) of the Constitution was held to be directory, and not mandatory, so that non-compliance does not invalidate the proceeding, or the order, made without such consultation. This Court gave several independent reasons for that

[7] **1945 SCC OnLine FC 7**

conclusion, each of which bears directly on the present case, namely: -

(i) The Constitution nowhere provides, expressly or by necessary implication, that non-compliance with Article 320(3)(c) shall invalidate either the proceedings or the final order.

(ii) Applying the **Montreal Street Railway** and **Biswanath Khemka** (supra) test, it was held that since the consultation requirement concerns the performance of a public duty, and treating acts, done without such consultation as void would cause serious general inconvenience and injustice to persons who have no control over the authority, responsible for making the reference, the provision must be read as directory.

(iii) The word "shall" recurs in almost every clause of Article 320; if consultation under Article 320(3)(c) were mandatory, every other clause of that Article would have to be treated as equally mandatory, so that an appointment made without strictly observing each of them would stand invalidated to the detriment of the appointee, a result the makers of the Constitution could not have intended.

(iv) The use of the word "shall", though ordinarily read as mandatory, does not invariably carry that effect; whether a provision is mandatory or directory depends on the intention behind it, gathered from its language, its nature, its design, and the consequences of construing it one way or the other, and not from the word used in isolation.

(v) A provision of this kind does not by itself confer an independent, enforceable right on the employee; the absence of consultation, or an irregularity in it, does not by itself found a claim for relief.

30. The reasoning in **Manbodhan Lal Srivastava** (supra) applies with full force to Regulation 5(a) of the 2003 Regulations and to the corresponding stipulation in Rule 24(4) of the Rules. Both provisions require the Commission to be consulted, or its approval to be obtained, before a temporary or officiating appointment can continue beyond a specified period. Neither provision states, expressly or by necessary implication, that failure to obtain such consultation or approval renders the appointment, or the service rendered under it, void. To treat the total absence of consultation of the Commission in the present case, as fatal to the promotees' appointment would cause, exactly the kind of serious inconvenience and injustice to which **Manbodhan Lal Srivastava**

(supra) refers, namely that the promotees had no control whatsoever over the State Government's continuing failure, over a period of several years, to make the reference required by Regulation 5(a). The failure to consult the Commission was result of inaction of the State Government.

31. This Court, in ***Suraj Parkash Gupta & Ors.*** v. ***State of J&K & Ors.***[8]**,** applied precisely this framework to a default identical to the one before us, a failure of the State Government to refer *ad hoc*/stop-gap promotions to the Public Service Commission for years together. It held that the delay was caused by the State's own inaction, and not by any fault of the employees; and the Regulation in question merely fixed a time-limit for reference and neither provides that service rendered without such reference becomes *non est*, nor did it prescribe any penalty for missing the time-limit. It was held that officiating service within an employee's quota, rendered by an eligible person, would be counted, once the appointment is later regularised, even where the reference to the Commission was never in fact made. This approach is consistent with the earlier decisions of this Court in **Direct Recruit Class II Engineering Officers' Association** v. **State of Maharashtra &**

[8] **(2000) 7 SCC 561**

Ors.[9] and **Aghore Nath Dey & Ors.** (supra). The aforesaid view has been reiterated recently in ***P. Rammohan Rao*** (supra), wherein it was held that delay in regularisation caused by the Government's own default, supports, rather than defeats, the employee's claim.

32. We must apply this framework to the facts before us. It is true that the order of appointment dated 01.10.2007 described the promotion as a "stop-gap arrangement" and provided that the promotees would revert to the post of Tehsildar, once direct recruits reported for duty. No doubt, the Commission was not consulted. However, the consultation being a directory requirement, the default of consultation does not invalidate the *ad hoc* appointments by way of *ad hoc* promotions of the promotees to the post of Deputy Collector. It would not be fair to let the State take advantage of its own continuing default by treating the promotees' *ad hoc* appointment, recommended by a duly constituted DPC and eventually regularised by competent authority, as bad in law. Therefore, non-consultation with the Commission does not disentitle the promotees to the benefit of proviso Rule 24(4) of the Rules. Accordingly, the first issue is answered.

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[9] **(1990) 2 SCC 715**

ISSUE NO. (ii) – WHETHER PROMOTEES ARE ENTITLED TO THE BENEFIT OF THE PROVISO TO RULE 24(4) OF THE RULES?

33. The promotees have been promoted on an officiating basis on 01.10.2007 and have rendered service continuously till they were regularly promoted that is on 07.05.2012. The issue which remains to be ascertained is whether the promotees were promoted within their quota.

34. A perusal of communication dated 16.04.2012 sent by the Commission to the Principal Secretary of the Uttarakhand Government mentions the recruitment year and the details of vacancies and thereafter the number of vacant posts of Deputy Collectors which are to be filled by promotion. The aforesaid communication unequivocally discloses that for the recruitment year 2007-2008, there were 19 vacancies under the promotee quota. The relevant extracts read as under: -

"2. Recruitment Year and the details of Vacancies

No. of vacant posts for promotion

S.No	Recruit. Year	Gen. unreserved	SC	ST	Total
1	2007-08	15	3	1	19"

Thus, it is axiomatic that 19 posts of Deputy Collectors were vacant in the recruitment year 2007-2008 which were to be filled

by promotion. From the perusal of note dated 05.04.2007, annexed with the counter affidavit, it is evident that 15 posts of Deputy Collector were vacant which were to be filled up by regular promotion. From the communication dated 06.12.2007 sent by Additional Secretary, Government of Uttarakhand to the Commission, it is evident that against 40 posts reserved for promotee officers, only 19 promotee Deputy Collectors were working and 15 vacant posts of the Deputy Collector for the recruitment year 2007-2008 were to be filled up by way of promotion.

35. It is pertinent to note that in para 3 of the counter affidavit filed on behalf of the State Government, it has been averred that requisition was sent on 26.12.2007 for appointment to the posts of 15 Deputy Collectors by promotion. It is also pertinent to note that no challenge to the communication dated 16.12.2012 sent by the Commission to the State Government has been made. The proceeding of the DPC dated 12.09.2007 cannot be relied upon as subsequent communication dated 06.12.2007 sent by Additional Secretary to Commission states that only 19 promotees were working against 40 posts reserved for promotees. The aforesaid material on record indicates that 15 vacancies of the Deputy

Collector were available for recruitment year 2007-2008 which were to be filled up by promotion.

36. Thus, the inevitable conclusion is that the promotees were appointed on the posts of Deputy Collector by way of ad hoc promotion within their quota. The High Court, therefore, erred in directing the State Government to determine the vacancies of Deputy Collector in the promotee quota for the year 2007-2008. The promotees are held entitled to benefit of Rule 24(4) of the Rules. The second issue is answered accordingly.

37. Insofar as submission of the direct recruits that controversy involved in the instant appeals is squarely covered by **Vinod Giri Goswami** (supra), suffice it to say that in the aforesaid decision, a two-Judge Bench of this Court found that the benefit of Rule 24(4) of the Rules could not be extended to the promotee officers in the absence of any finding that promotees had continuously worked within the promotee quota till they were regularly promoted to the post. However, it has also been held that promotees are entitled to count *ad hoc* service according to proviso to Rule 24(4) of the Rules provided a promotee has continuously worked till he is regularly promoted to the post within the promotee quota. Therefore, the aforesaid decision is of no assistance to the direct recruits.

CONCLUSION

38. For the aforementioned reasons, the promotees are held entitled to benefit of regular appointment on the post of Deputy Collector with effect from 01.10.2007. The State Government shall issue a revised seniority list of the Deputy Collectors within a period of three months from today.

39. Accordingly, the judgment dated 08.08.2019 passed by the High Court in W.P. (S/B) No. 68 of 2013 is modified to the extent mentioned above. It is clarified that this judgment shall have no bearing on the claims of the interveners who have been promoted to the post of Deputy Collectors in subsequent years.

40. In the result, C.A. No. 3071 of 2024 filed by the promotees is allowed, whereas C.A. No. 3070 of 2024, C.A. No.3072 of 2024 and C.A. No. 4452 of 2024 are dismissed. There shall be no order as to costs.

.....J.
[PAMIDIGHANTAM SRI NARASIMHA]

.....J.
[ALOK ARADHE]

NEW DELHI;
JULY 29, 2026.