

IN THE HIGH COURT OF JHARKHAND AT RANCHI

L.P.A. No. 204 of 2024

1. Binod Kumar Mahto, aged about 49 years, son of Sri Alku Ram Mahto, resident of village-Ormo, P.O. Chandipur, P.S. Kasmar, District-Bokaro, Jharkhand.
2. Shashi Prakash, aged about 43 years, son of Sri Prakash Chandra Chourasiya, resident of Mohalla-Malviya Marg Bara Bazar, Hazaribagh, P.O., P.S. and District-Hazaribagh.
3. Ajay Kumar, aged about 46 years, son of Late Gandori Ram Agarwal, resident of Village + Post + P.S. Ahilyapur, District-Giridih, Jharkhand.

... ... Appellants/Writ Petitioners

Versus

1. The State of Jharkhand.
2. The Principal Secretary, Department of Home, Personnel and Disaster Management, Project Building, P.O. and P.S. Dhurwa, District Ranchi, Jharkhand.
3. The Joint Secretary, Department of Home, Personnel and Disaster Management, Project Building, P.O. and P.S. Dhurwa, District Ranchi, Jharkhand.
4. The Principal Secretary, Department of Personnel, Administrative Reforms and Raj bhasa, Govt. of Jharkhand, Project Building, P.O. and P.S. Dhurwa, District Ranchi, Jharkhand.
5. The Special Secretary, Department of Home, Govt. of Jharkhand, Project Building, P.O. and P.S. Dhurwa, District-Ranchi, Jharkhand.
6. Manish Toppo, aged about 44 years, son of Augustine Toppo, at present posted as Superintendent of Police, Saeraikela Kharsawan officiating from S.P. Office Saeraikela Kharsawan, P.O., P.S. and District-Saeraikela Kharsawan.

7. Kailash Karmali, aged about 40 years, son of Ramratan Karmali, at present posted as Superintendent of Police, Traffic Ranchi, officiating from S.P. Traffic Office, P.O., P.S. and District-Ranchi.
8. Pitamber Singh Kherwar, aged about 43 years, son of Mahabir Kherwar, at present posted as Superintendent of Police, Dumka, officiating from S.P. Office, P.O., P.S. & District-Dumka.
9. Roshan Guria, aged about 45 years, son of Soma Guria, at present posted as Additional Superintendent of Police, Jharkhand Police Academy, Hazaribagh, officiating at Jharkhand Police Academy, Hazaribagh, P.O., P.S. & District-Hazaribagh.
10. Sri Ram Samad, aged about 42 years, son of Gulam Samad, at present as Additional Superintendent of Police, Composite Control Room, Ranchi, officiating at Composite Control Room, P.O., P.S. Dhurwa & District-Ranchi.
11. Nisha Murmu, aged about 38 years, daughter of Salkhau Murmu, at present posted as Additional Superintendent of Police, Anti-Corruption Bureau, officiating at Anti-Corruption Bureau office, P.O. G.P.O., P.S. Sukhdeonagar & District-Ranchi.
12. Surjit Kumar, aged about 50 years, son of Gumani Ram, at present posted as SDPO Barhi, Officiating at Barhi P.S., P.O., P.S. Barhi & District-Hazaribagh.
13. Virendra Kumar Choudhary, aged about 46 years, son of late Mangar Mahtha, at present posted as Additional Superintendent of Police (Administration), officiating at DIG Office, North Chot Nagpur Range, P.O., P.S. & District-Hazaribagh.
14. Rahul Deo Baraik, aged about 38 years, son of Sohan Baraik, at present posted as SDPO Chaibasa, officiating at Chaibasa P.S., P.O., P.s. & District-Chaibasa.

- 15. Christopher Kerketta, aged about 50 years, son of Late Elias Kerketta, at present posted as SDPO Torpa, officiating at Torpa P.S., P.O., P.S. Torpa, District Khunti.
- 16. Prabhat Ranjan Barwar, aged about 50 years, son of Surya Bhusan Ram, at present posted as SDPO Tandwa, officiating at Tandwa P.S., P.O., P.S. Tandwa & District-Chatra.
- 17. Anup Kumar Baraik, aged about 44 years, son of Gulab B. Baraik, at present posted as SCRB (State Crime Records Bureau), Ranchi, officiating at Jharkhand Police Headquarters, Dhurwa, P.O., P.S. Dhurwa & District-Ranchi.
- 18. Samir Kumar Tirkey, aged about 47 years, son of Peter Tirkey, at present posted as Dy. S.P. (H.Q.), Lohardaga, officiating at Police H.Q., Lohardaga, P.O., P.S. & District-Lohardaga.
- 19. Hiralal Ravidas, aged about 51 years, son of Dukhi Ravidas, JAPTC (Jharkhand Armed Police Training College), P.O., P.S. & District-Hazaribagh.
- 20. Bachandeo Kujur, aged about 40 years, son of Janga Kujur, at present posted as Dy. S.P. Patamda, officiating at officiating Jugsalai, Thana, Jamshedpur, P.O. Jamshedpur, P.S. Jugsalai & District-Ranchi.
- 21. Rajat Manik Baxla, aged about 38 years, son of Late Sulbanuj Baxla, at present posted as SDPO Nirsa, officiating at Nirsa P.S., P.O., P.S. Nirsa & District-Dhanbad.

... .. Respondents/Respondents

**CORAM: HON’BLE MR. JUSTICE SUJIT NARAYAN PRASAD
HON’BLE MR. JUSTICE RAJESH KUMAR**

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|--|---|
| For the Appellants | : Mr. Ajit Kumar, Sr. Advocate
Ms. Aprajita Bhardwaj, Advocate |
| For the Resp.-State | : Mr. Rajiv Ranjan, Advocate General
Mr. Mohan Kr. Dubey, AC to AG
Mr. Shray Mishra, AC to AG |
| For the Resp. Nos. 9, 10, 12,
14, 16 & 19 | : Mr. Rahul Kumar, Advocate |

Mr. Kumar Vaibhav, Advocate
Mr. Durgesh Agarwal, Advocate
Ms. Richa Lal, Advocate

For the Resp. Nos. 11, 18, 20
& 21

: Mr. Saurav Arun, Advocate
Ms. Ayushi, Advocate

For the Resp. Nos. 13 & 17

: Mr. Shailesh Kr. Singh, Advocate
Mr. Abhijeet Kumar Singh, Advocate

CAV/Reserved on 16.04.2025

Pronounced on 10/06/2025

Per Sujit Narayan Prasad, J.

1. The instant appeal under Clause 10 of the Letters Patent is directed against the order/judgment dated 09.02.2024 passed by learned Single Judge of this Court in W.P.(S) No. 821 of 2020, whereby and whereunder, the writ petition has been dismissed holding that the writ petitioners voluntarily chose to join the police service when given the option to do so and therefore, cannot claim that joining the service was a policy decision binding them to it due to which they cannot demand seniority from the date of their initial appointment.
2. The brief facts of the case as per the pleading made in the writ petition requires to be enumerated, read as under:

The Jharkhand Public Service Commission floated an advertisement being Advertisement No. 11 of 2007 for Preliminary Examination which was scheduled to be held on 11.01.2008 for different posts of Jharkhand Administrative Service and Jharkhand Police Service.

The appellants/writ petitioners being eligible for the said posts, have applied and appeared in the Preliminary and Mains Examination and also in the interview and they have been declared to be successful in the

Administrative Service Category, although their preference was for Jharkhand Police Service.

After completion of their training, the appellant no.1 was appointed as Circle Officer, Bishnupur, District Gumla; appellant no.2 was appointed as Circle Officer, Bagodar, District-Giridih and; appellant no.3 was appointed as Block Development Officer at Torpa Block-D, District-Khunti.

While the appellants/writ petitioners were working as such, a policy decision has been taken by the State Government with respect to filling up the 06 posts in the Jharkhand Police Service which remained vacant and a press release was issued on 08.10.2011 in which the 22 selected persons who have given their first preference as Police Service had been invited to give their option/no objection to join the Jharkhand Police Service.

In pursuance thereof, the appellants/writ petitioners gave their option/no objection for the Jharkhand Police Service. Thereafter, the Special Secretary, Department of Home, Govt. of Jharkhand vide letter no.2312 dated 25.05.2012 issued appointment letters to the appellants/writ petitioners.

It is the case of the appellants/writ petitioners that the previous service rendered by the appellants/writ petitioners in the Jharkhand Administrative Service has not been considered relating to the appointment in the Jharkhand Police Service, therefore, representation before the respondent no.2 for counting their previous service and grant of

seniority and calculation of their pay scale from the initial date of appointment.

It is also the case of the appellants/writ petitioners that the Dy. Secretary, Department of Home, Personnel and Disaster Management, Govt. of Jharkhand has given the pay protection to the appellants/writ petitioners but no order has been passed with respect to the seniority.

The appellants/writ petitioners, being aggrieved with the same, have approached this Court by filing writ petition which having been dismissed, the present appeal has been preferred.

3. It is evident from the aforesaid factual aspect that the Jharkhand Public Service Commission published Advertisement No. 11/2007 for Preliminary Examination to be held on 11.01.2008 for different posts of Jharkhand Administrative Service, Jharkhand Police Service and other allied services in the State of Jharkhand. The total posts advertised for Jharkhand Administrative Service was 173. Similarly, the total posts earmarked for Jharkhand Police Service was 45 only.
4. The appellants/writ-petitioners, being eligible for such appointment, applied and participated in the selection process. The Preliminary Test was held on 11.01.2008. The petitioners became successful in the written test, interview and hence according to their merit position obtained by them, they were appointed on different posts in the Jharkhand Administrative Service. It is case of the petitioners that their first choice/preference was for Jharkhand Police Service but still they were appointed in the Administrative Cadre. Later, it was found that six posts of Deputy

Superintendent of Police remained vacant for the reason that the selected candidates were not found fit for appointment on the post of Deputy Superintendent of Police/ Jharkhand Police Service, either medically or otherwise and as such a policy decision was taken by the Government to call for the candidates who were above in the merit list and had opted for the Jharkhand Police Service as their first choice.

5. In view of the fact that these appellants/writ-petitioners had opted for the post of Deputy Superintendent of Police as first choice, option was given to altogether twenty-two candidates for shifting themselves from Jharkhand Administrative Service to the Jharkhand Police Service.
6. After the policy decision of the Government and option given to the appellants/writ-petitioners, they accepted such offer and shifted from Jharkhand Administrative Service to the Jharkhand Police Service. Such shifting took place with effect from 01.07.2012. Petitioners have further pleaded that they ought to have been treated in service from 12.08.2010 and their seniority be counted according to the merit list of the Jharkhand Public Service Commission and the same should have been treated for all purposes from 12.08.2010 i.e. their initial date of appointment.
7. It is case of the appellants/writ-petitioners that their position would have been above Manish Toppo, whose name appears at Serial No. 71 in the seniority list dated 01.01.2016, duly notified on 29.05.2020. The other seniority list which was notified on 04.01.2023, there also appellants/writ-petitioners have been shown below Manish Toppo. The position of appellants/writ-petitioners in this seniority list dated 29.05.2020 appears at Serial Nos. 87, 88 and 89 respectively.

8. Being aggrieved, appellants/writ-petitioners filed their representation for placing them at appropriate place treating their initial date of appointment on 12.08.2010 but such requests of the appellants/writ-petitioners were not acceded to and the same was rejected on 24.06.2019. Accordingly, claim of the appellants/writ-petitioners to place their position in the seniority list at appropriate places taking into consideration their initial date of joining along with the members of the Jharkhand Police Service appointed through the 3rd JPSC Examination in terms of Para 3(Ga)(iii) of the Departmental Circular No. 15784, dated 26.08.1972, has been rejected.

The appellants/writ-petitioners, being aggrieved thereof, have approached to this Court by filing writ petition being W.P.(S) No. 821 of 2020 which having been dismissed by the learned Single Judge, the present appeal has been filed challenging the order dated 09.02.2024 passed in W.P.(S) No. 821 of 2020.

Argument on behalf of the learned counsel for the appellants:

9. Mr. Ajit Kumar, learned senior counsel appearing for the appellants has taken the following grounds in assailing the impugned order:
- (i) The ground has been taken that the appellants/writ petitioners cannot be denied their seniority when they have changed their cadre in view of the policy decision of the Government, as such, the order as contained in Memo No. 3283 dated 24.06.2019, whereby and whereunder, the seniority claimed by the appellants/writ petitioners to be given according to the officers of the Jharkhand Police Service has been rejected, is not sustainable in the eyes of law.

- (ii) The ground has been taken that if such shifting is done in view of the policy decision of the State Government and the decision taken by the Government, then the services rendered in the previous service, i.e., Jharkhand Administrative Service, shall be counted for the purposes of seniority.
- (iii) The ground has also been taken that if the State Government has given the pay protection to the appellants/writ petitioners with respect to their past services rendered in the Jharkhand Administrative Service in terms of Rule 78(ka)(2) of the Jharkhand Service Code then the same length of service ought to have been counted for the purpose of seniority by considering their services from the initial date of appointment.
- (iv) The ground has been taken that the appellants/writ petitioners have also been kept below the reserved category candidates in the seniority list.

10. Learned counsel for the appellants, based upon the aforesaid ground, has submitted that the impugned order therefore, needs to be interfered with.

Argument on behalf of the learned counsel for the Respondents:

11. Learned Advocate General appearing for the respondent-State has advanced his argument by taking the following grounds:

- (i) There is no error in the impugned order passed by the learned Single Judge reason being that it is a case where the appellants/writ petitioners on their own have chosen to change the service and once they have given their option to relinquish the service of Jharkhand

Administrative Service and as per their option they have come to Jharkhand Police Service for the post of Dy. S.P. then the seniority with effect to the date when the appellants/writ petitioners was in the Jharkhand Administrative Service cannot be reckoned, the moment the appellants/writ petitioners have chosen to come in the fresh service, i.e., Jharkhand Police Service as Dy. S.P.

- (ii) If the contention of the appellants/writ petitioners will be accepted then the same will lead to granting seniority to the appellants/writ petitioners even though they have not taken birth in the service of the Jharkhand Police Service in the capacity of Dy.S.P.
- (iii) It has been submitted that the law in this regard is well settled that seniority cannot be counted from the date when the public servant has not taken birth in the cadre, exactly the same is the position herein.
- (iv) In order to strengthen his argument on the aforesaid point the learned Advocate General has relied upon the following judgements:
 - (a) ***State of Bihar and Ors. vs. Arbind Jee, (2021) 14 SCC 38;***
 - (b) ***Ganga Vishan Gujrati and Ors. vs. State of Rajasthan and Ors., (2019) 16 SCC 28;***
 - (c) ***Union of India and Anr. Vs. Onkar Chand and Ors., (1998) 9 SCC 298;***

12. Mr. Rahul Kumar, learned counsel for the respondent nos. 9, 10, 12, 14, 16 & 19 has accepted the argument advanced on behalf of the learned Advocate General.

13. Mr. Saurav Arun, learned counsel for the respondent nos. 11, 18, 20 & 21 has also accepted the argument advanced on behalf of the learned Advocate General and in addition thereto, he has contended that if the State has taken any policy decision for the smooth functioning of administration, then there should be least interference by the High Court under Article 226 of the Constitution of India. In order to fortify his argument, he has relied upon the following judgements:

(a) ***L.P.A. No. 194 of 2021 [The State of Jharkhand and Ors. vs. Binod Kumar Lal and Ors.]***

(b) ***Director of School Education and Anr. Vs. A.N. Kandaswamy and Anr., (1998) 8 SCC 26;***

14. Mr. Shailesh Kr. Singh, learned counsel for the respondent nos. 13 and 17 has also accepted the argument advanced on behalf of the learned Advocate General.

Analysis:

15. We have heard the learned counsel for the parties, perused the documents available on record as also the finding recorded by the learned Single Judge in the impugned order.

16. The issues which require consideration are as under:

(i) Whether the date of appointment on which the appellants have been appointed as Dy. S.P. (Jharkhand Police Service) be shifted from

01.07.2012 to 12.08.2010 the day when the appellants was in the cadre of Jharkhand Administrative Service.

- (ii) Whether shifting the date of appointment from 01.07.2012 to 12.08.2010, the day when the appellant was in the Jharkhand Administrative Service Cadre will amount to giving seniority with effect to the date when they have not taken birth in the services in the cadre of Jharkhand Police Service.
- (iii) Whether granting seniority by shifting the date of appointment made to the post of Dy. S.P. (Jharkhand Police Service) with retrospective effect is permissible having impact on the other members in the service.

17. This Court taking into consideration that all the issues since are interlinked, as such, are being taken together for its consideration.

18. This Court, before consideration of the aforesaid issues, deems it fit and proper to refer the admitted facts herein for proper adjudication of the *lis*.

19. In pursuance of the advertisement being Adv. No. 11 of 2007 floated by the JPSC, has called for application from one or the other candidates to fill up various posts in the Jharkhand Administrative Service and Jharkhand Police Service.

20. The appellants/writ petitioners have applied and declared to be successful but based upon the merit had been allotted with the Jharkhand Administrative Service and gave their joining on 12.08.2010. The appellants/writ petitioners had been appointed and started discharging their duties under the said cadre.

21. So far as the post of Jharkhand Police Service is concerned in the capacity of Dy.S.P., 06 vacancies out of 45 remained vacant due to candidates having been found medically unfit or for other reasons. Thereafter, the Government took decision to fill-up the vacant posts of Dy.S.P. being 06 in number and for that purpose, has sought for option from one or the other candidates who have joined in the Jharkhand Administrative Service.
22. The appellants/writ petitioners have given their option and had been selected in the Jharkhand Police Service even though they had got 845 marks and the appointment made to the post of Dy.S.P. at the initial stage, the cut off marks for Jharkhand Police Service was 848.4 marks, therefore, in order to fill-up the 06 vacancies which remained vacant, the cut off marks has been reduced to 841.
23. The appellants/writ petitioners have joined the post of Dy.S.P. in the year 2012 and started discharging their duties. Thereafter, the appellants/writ petitioners raised grievance to count the service in the capacity of Dy.S.P. from the date when they have been inducted in the Jharkhand Administrative Service, i.e., w.e.f. 12.08.2010. The same has been denied and the appellants/writ petitioners being aggrieved thereof, preferred writ petition seeking therein the following prayers:

“... the Petitioners pray for issuance of an appropriate writ, order or direction, particularly in the nature of certiorari for quashing the order as contained in Memo No. 3283 dated 24.6.2019, whereby and whereunder, the seniority claimed by the petitioners to be given according to the Officers of the Jharkhand Police Service of 3rd Jharkhand Public Service Commission Batch has been rejected in terms of Departmental Letter No. 15784 dated 26.8.1972, which is

absolutely illegal and arbitrary and further pray for a direction upon the respondent authorities to consider the services of the petitioners from the date of their initial appointment dated 12.08.2010 and place them in appropriate place of seniority list, prepared by the Department, AND/OR be pleased to grant such other relief/reliefs as Your Lordships may deem fit and proper for doing conscionable justice to the Petitioners."

24. The learned writ court on consideration of the relinquishment of the services rendered under the Jharkhand Administrative Service by opting to come to Jharkhand Police Service as Dy.S.P. has negated the claim by refuting the applicability of Circular No.15784 dated 26.08.1972. The same is under challenge in this appeal.

25. The Circular No.15784 dated 26.08.1972 needs to be referred herein. Relevant clause, i.e., Clause 2(Kh)(iii), has also been referred by the learned Single Judge in the order impugned. The same is being reproduced as under for ready reference:

"यदि किसी पदाधिकारी को उसके ही अनुरोध पर एक सेवा से दूसरी सेवा में अंतरित किया जाए, तो उसके द्वारा पूर्व पद पर की गई सेवाएं वरीयता के लिए नहीं गिनी जायेगी. किन्तु यदि ऐसा अन्तरण सरकार द्वारा किये गए नीति सम्बन्धी विनिश्चय के अनुसार हो, तो उसके द्वारा पूर्व पद पर की गई सेवाएं वरीयता के लिए गिनी जायेगी."

26. It is evident from the aforesaid circular that, if an officer is transferred from one service to another on his own request, the service passed by him on previous post will not be reckoned for the purpose of seniority. However, if such transfer is in accordance with the policy decision taken by the Government, then the services rendered by him on the previous post will be counted for seniority. From aforesaid it can be inferred that if

one or the other public servant is seeking transfer on his request then such public servant is to be placed to the bottom of the seniority list.

27. Herein the issue of applicability of Circular dated 26.08.1972, therefore, needs to be considered and the same will be considered by adverting to the facts. The admitted position herein is that the case of the appellants/writ petitioners is neither of transfer nor of change in the cadre rather the case is of change in the service on their own option i.e., from Jharkhand Administrative Service to Jharkhand Police Service in the capacity of Dy.S.P.
28. The Jharkhand Administrative Service and Jharkhand Police Service in the capacity of Dy.S.P. are two different services under the State of Jharkhand which will also be evident from the advertisement itself wherein the reference of these posts have been given showing different vacancy position, category wise.
29. There is difference in between service and cadre. The “service” means a particular service whereas 'cadre' means the strength of the Service or a part of a service sanctioned as a separate unit. Further, the service always means a service as per the creation by the Statute having no bearing with another service while the cadre has been defined said to be within the service having the hierarchy by way of creating cadre of the post for the purpose of granting promotions in the same cadre.
30. The case in hand if taken into consideration, the case of the appellants/writ petitioners is of change in service, i.e., they initially joined Jharkhand Administrative Service and as per their option having been sought for by

the State, they came to Jharkhand Police Service in the capacity of Dy.S.P. The seniority list of the Jharkhand Administrative Service is also different to that of the Jharkhand Police Service for the post of Dy.S.P., hence both are two different services.

31. The list of seniority holding the post of Dy.S.P. will be separate while the post of basic cadre in the Jharkhand Administrative Service will be separate having no bearing with each other due to the reason that both are different services in the State.
32. The appellants/writ petitioners have chosen to come to different service and thereafter, raised the grievance for counting the period of service in the capacity of Dy.S.P. from the date when they assumed their charge in the Jharkhand Administrative Service in the basic cadre therein. Therefore, it is evident from the case of the appellants/writ petitioners itself that they are seeking to count the seniority from the date when they were in different service construing themselves to be in the same cadre even though they have come in the different service of Jharkhand Police Service holding the post of Dy.S.P.
33. Thus, on the basis of discussion made herein above, it is apparent that the appellants and others were given option to join Police service and they exercised their option to join the police service, it cannot be said that it was a policy decision by which appellants were bound to join police service therefore claim of the appellants does not come within the horizon of the Circular of 1972 since they picked willingly to shift their service because vacancies existed but right does not accrue in their favour for claiming their seniority from the date of initial appointment.

34. It is further evident from the admitted fact as per the case of the present appellants/writ petitioners that they are seeking seniority from the date when they have not taken birth in the service what to say about the cadre since they have joined the post of Dy.S.P. in the year 2012 and now they want to shift the date of their appointment as Dy.S.P. while they had joined in the Jharkhand Administrative Service.
35. The birth in the cadre or the service is the paramount consideration for counting the seniority as has been held by the Hon'ble Apex Court in the case of ***State of Bihar and Ors. vs. Arbind Jee*** (supra) at paragraph- 11 and 12. For ready reference, the said paragraph is being referred as under:

“11. To challenge the conferment of retrospective seniority, the learned counsel for the appellant has cited Shitla Prasad Shukla v. State of U.P. [Shitla Prasad Shukla v. State of U.P., 1986 Supp SCC 185 : 1986 SCC (L&S) 584] where this Court speaking through M.P. Thakkar, J. rightly held that : (SCC p. 190, para 10)

“10. ... The latecomers to the regular stream cannot steal a march over the early arrivals in the regular queue. On principle the appellants cannot therefore succeed. What is more in matters of seniority the Court does not exercise jurisdiction akin to appellate jurisdiction against the determination by the competent authority, so long as the competent authority has acted bona fide and acted on principles of fairness and fair play. In a matter where there is no rule or regulation governing the situation or where there is one, but is not violated, the court will not overturn the determination unless it would be unfair not to do so.”

12. The principles enunciated in Shitla Prasad Shukla [Shitla Prasad Shukla v. State of U.P., 1986 Supp SCC 185 : 1986 SCC (L&S) 584] are applicable to the case at hand. The compassionate appointment of the respondent is not being questioned here but importantly he is claiming seniority benefit for 10 years without working for a single day during that period. In other words, precedence is being claimed over other regular employees who have entered service between 1985 to

1996. In this situation, the seniority balance cannot be tilted against those who entered service much before the respondent. Seniority benefit can accrue only after a person joins service and to say that benefits can be earned retrospectively would be erroneous. Such view was expressed in many cases and most recently in Ganga Vishan Gujrati v. State of Rajasthan [Ganga Vishan Gujrati v. State of Rajasthan, (2019) 16 SCC 28 : (2021) 1 SCC (L&S) 403] . Dr D.Y. Chandrachud, J. speaking for the Court opined as under : (Ganga Vishan Gujrati case [Ganga Vishan Gujrati v. State of Rajasthan, (2019) 16 SCC 28 : (2021) 1 SCC (L&S) 403] , SCC p. 52, para 45)

“45. A consistent line of precedent of this Court follows the principle that retrospective seniority cannot be granted to an employee from a date when the employee was not borne on a cadre. Seniority amongst members of the same grade has to be counted from the date of initial entry into the grade. This principle emerges from the decision of the Constitution Bench of this Court in Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra [Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra, (1990) 2 SCC 715 : 1990 SCC (L&S) 339] . The principle was reiterated by this Court in State of Bihar v. Akhouri Sachindra Nath [State of Bihar v. Akhouri Sachindra Nath, 1991 Supp (1) SCC 334 : 1991 SCC (L&S) 1070] and State of Uttaranchal v. Dinesh Kumar Sharma [State of Uttaranchal v. Dinesh Kumar Sharma, (2007) 1 SCC 683 : (2007) 1 SCC (L&S) 594] .”

36. Further, it is trite that regular service cannot be reckoned from a date when the employee was not even borne in the cadre and seniority amongst members of the same Grade has to be counted from the date of initial entry into the Grade, reference in this regard may be made to the judgment rendered by the Hon’ble Apex Court in the case of **P. Sudhakar Rao v. U. Govinda Rao, (2013) 8 SCC 693**. Relevant paragraph of the aforesaid judgment is being quoted as under:

45. Without intending to multiply precedents on this subject, reference may be made to a decision rendered by this Court more than two

decades ago. *In State of Bihar v. Akhouri Sachindra Nath [1991 Supp (1) SCC 334 : 1991 SCC (L&S) 1070 : (1991) 16 ATC 936]* it was held that retrospective seniority cannot be given to an employee from a date when he was not even borne in the cadre. So also, seniority cannot be given with retrospective effect so as to adversely affect others. Seniority amongst members of the same grade must be counted from the date of their initial entry into the grade. It was held: (SCC pp. 342-43, para 12)

“12. In the instant case, the promotee Respondents 6 to 23 were not born in the cadre of Assistant Engineer in the Bihar Engineering Service, Class II at the time when Respondents 1 to 5 were directly recruited to the post of Assistant Engineer and as such they cannot be given seniority in the service of Assistant Engineers over Respondents 1 to 5. It is well settled that no person can be promoted with retrospective effect from a date when he was not borne in the cadre so as to adversely affect others. It is well settled by several decisions of this Court that amongst members of the same grade seniority is reckoned from the date of their initial entry into the service. In other words, seniority inter se amongst the Assistant Engineers in Bihar Engineering Service, Class II will be considered from the date of the length of service rendered as Assistant Engineers. This being the position in law Respondents 6 to 23 cannot be made senior to Respondents 1 to 5 by the impugned government orders as they entered into the said service by promotion after Respondents 1 to 5 were directly recruited in the quota of direct recruits. The judgment of the High Court quashing the impugned government orders made in Annexures 8, 9 and 10 is unexceptionable.”

46. This decision was cited with approval, a few years ago, along with the decision rendered in *Keshav Chandra Joshi v. Union of India [1992 Supp (1) SCC 272 : 1993 SCC (L&S) 694 : (1993) 24 ATC 545]*. This Court held that when a quota is provided for, then the seniority of the employee would be reckoned from the date when the vacancy arises in his/her quota and not from any anterior date of promotion or subsequent date of confirmation. It was observed that injustice ought not to be done to one set of employees in order to do justice to another set. It was said in *Uttaranchal Forest Rangers' Assn. (Direct Recruit) v. State of U.P. [(2006) 10 SCC 346 : (2007) 1*

SCC (L&S) 116] , on referring to these judgments that: (SCC p. 364, paras 37-38)

“37. We are also of the view that no retrospective promotion or seniority can be granted from a date when an employee has not even been borne in the cadre so as to adversely affect the direct recruits appointed validly in the meantime, as decided by this Court in Keshav Chandra Joshi v. Union of India [1992 Supp (1) SCC 272 : 1993 SCC (L&S) 694 : (1993) 24 ATC 545] held that when promotion is outside the quota, seniority would be reckoned from the date of the vacancy within the quota rendering the previous service fortuitous. The previous promotion would be regular only from the date of the vacancy within the quota and seniority shall be counted from that date and not from the date of his earlier promotion or subsequent confirmation. In order to do justice to the promotees, it would not be proper to do injustice to the direct recruits. ...

38. This Court has consistently held that no retrospective promotion can be granted nor can any seniority be given on retrospective basis from a date when an employee has not even been borne in the cadre particularly when this would adversely affect the direct recruits who have been appointed validly in the meantime.”

37. The aforesaid view has been again reiterated by the Hon’ble Apex Court in the case of **Ganga Vishan Gujrati v. State of Rajasthan, (2019) 16 SCC 28** wherein at paragraph 45 the Hon’ble Apex Court has observed which reads as under:

45. A consistent line of precedent of this Court follows the principle that retrospective seniority cannot be granted to an employee from a date when the employee was not borne on a cadre. Seniority amongst members of the same grade has to be counted from the date of initial entry into the grade. This principle emerges from the decision of the Constitution Bench of this Court in Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra [Direct Recruit Class II Engg. Officers' Assn. v. State of Maharashtra, (1990) 2 SCC 715 : 1990 SCC (L&S) 339] . The principle was reiterated by this Court in State of Bihar v. Akhouri Sachindra Nath [State of Bihar v. Akhouri Sachindra Nath, 1991 Supp (1) SCC 334 : 1991 SCC (L&S) 1070] and State of

Uttaranchal v. Dinesh Kumar Sharma [State of Uttaranchal v. Dinesh Kumar Sharma, (2007) 1 SCC 683 : (2007) 1 SCC (L&S) 594] . In Pawan Pratap Singh v. Reevan Singh [Pawan Pratap Singh v. Reevan Singh, (2011) 3 SCC 267 : (2011) 1 SCC (L&S) 481] , this Court revisited the precedents on the subject and observed : (SCC pp. 281-82, para 45)

“45. ... (i) The effective date of selection has to be understood in the context of the Service Rules under which the appointment is made. It may mean the date on which the process of selection starts with the issuance of advertisement or the factum of preparation of the select list, as the case may be.

(ii) Inter se seniority in a particular service has to be determined as per the Service Rules. The date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one officer or the other or between one group of officers and the other recruited from different sources. Any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.

(iii) Ordinarily, notional seniority may not be granted from the backdate and if it is done, it must be based on objective considerations and on a valid classification and must be traceable to the statutory rules.

(iv) The seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant Service Rules. It is so because seniority cannot be given on retrospective basis when an employee has not even been borne in the cadre and by doing so it may adversely affect the employees who have been appointed validly in the meantime.”

38. It needs to refer herein that even the seniority cannot be reckoned from the date of occurrence of the vacancy and cannot be given retrospectively unless it is so expressly provided by the relevant Service Rules. Further, the date of entry in a particular service or the date of substantive appointment is the safest criterion for fixing seniority inter se between one

officer or the other or between one group of officers and the other recruited from different sources. Any departure therefrom in the statutory rules, executive instructions or otherwise must be consistent with the requirements of Articles 14 and 16 of the Constitution.

39. The Hon'ble Apex Court in the case of ***P. Sudhakar Rao v. U. Govinda Rao***, (2013) 8 SCC 693 has categorically observed that the mere existence of a vacancy is not enough to enable an employee to claim seniority. The date of actual appointment in accordance with the required procedure becomes important in such a case. For ready reference the relevant paragraph is being quoted as under:

47. However, the mere existence of a vacancy is not enough to enable an employee to claim seniority. The date of actual appointment in accordance with the required procedure becomes important in such a case. This was so held in State of Uttaranchal v. Dinesh Kumar Sharma [(2007) 1 SCC 683 : (2007) 1 SCC (L&S) 594] (followed in Nani Sha v. State of Arunachal Pradesh [(2007) 15 SCC 406 : (2010) 1 SCC (L&S) 719] , SCC p. 414, para 15) wherein it was said: (SCC pp. 691-92, para 34)

“34. Another issue that deserves consideration is whether the year in which the vacancy accrues can have any relevance for the purpose of determining the seniority irrespective of the fact when the persons are recruited. Here the respondent's contention is that since the vacancy arose in 1995-1996 he should be given promotion and seniority from that year and not from 1999, when his actual appointment letter was issued by the appellant. This cannot be allowed as no retrospective effect can be given to the order of appointment order under the Rules nor is such contention reasonable to normal parlance. This was the view taken by this Court in Jagdish Ch. Patnaik v. State of Orissa [(1998) 4 SCC 456 : 1998 SCC (L&S) 1156] .”

40. Thus, as per the aforesaid settled position it is evident that no retrospective promotion can be granted nor can any seniority be given on retrospective

basis from the date when an employee has not even been born in the cadre particularly when this would adversely affect the direct recruits who have been appointed validly in the meantime.

41. The other ground has been taken by the appellant that if the State Government has given the pay protection to the appellants/writ petitioners with respect to their past services rendered in the Jharkhand Administrative Service then the same length of service ought to have been counted for the purpose of seniority by considering their services from the initial date of appointment.
42. *Per contra*, learned advocate General has submitted that the service which has been rendered by the appellants in the Jharkhand Administrative Service, the benefit thereof has been given by giving pay protection and the service has been decided also to be counted for the purpose of pensionary benefit therefore giving pay protection or counting the said period for pensionary benefit has no relation with the issue of seniority.
43. In the aforesaid context it would be apt to refer herein the ratio rendered by the Hon'ble Apex Court in the case of ***Director of School Education v. A.N. Kandaswamy, (supra)*** wherein it has been observed that merely because the past services were counted for the purpose of protecting the “pay” and awarding selection or special grade, it cannot be said that employee concerned continued to belong to the same old cadre. For ready reference the relevant paragraph is being quoted as under:

8. The respondents had willingly joined Government High School service, and therefore, they thereafter belonged to a separate cadre known as secondary education service. On their absorption in government service, they ceased to be a part of the cadre of teachers

serving in schools run by the Panchayat Union. Merely because their past services were counted for the purpose of protecting their “pay” and awarding selection or special grade, it cannot be said that they continued to belong to the same old cadre. The very basis on which the Tribunal proceeded was wrong and therefore its decision stands vitiate.

44. Thus it is considered view of this Court that giving pay protection or counting the said period for pensionary benefit cannot have any concern with the issue of seniority due to the reason that if there will be any disturbance in the seniority then it will have impact upon the other employees in the service or the cadre while giving pay protection or counting the period for pensionary benefit will have no impact upon the other public servant rather it was for the benefit of individual having no concern with the other members of the service or cadre.
45. Further, in the instant case the date of appointment of petitioners/appellants in the Jharkhand Police Service in the capacity of Dy.S.P. is in the year 2012, hence, as per the settled position of law as discussed hereinabove their seniority is to be counted from the year 2012. Further, the appellants/writ petitioners are the candidates of 3rd Batch of JPSC, therefore, they have been put at the bottom of the successful appointees so as not to cause any detriment to the persons already appointed on the basis of their respective merit position.
46. The first instance of appointees since have more marks than the cut off marks for the Jharkhand Police Service, as such, they have been put above the appellants in the 3rd Batch of JPSC, accordingly, the State Government has put the appellants at the bottom of these appointees under the cadre of Dy.S.P., the basic cadre in the Jharkhand Police Service.

47. Learned counsel for the appellants/writ petitioners has further contended that the appellants have been kept even below the reserved category candidates, therefore, the prayer has been made to keep the appellants/writ petitioners above than the reserved category candidates then only it will be said to be based upon the merit position as has been determined by the Commission.
48. Learned Advocate General has submitted that the unreserved and reserved category candidate cannot be segregated since the appellants/writ petitioners had gone to Jharkhand Administrative Service due to securing lesser marks than the last selected candidate in the Jharkhand Police Service in the capacity of Dy.S.P. and since the appellants have opted to come to the Jharkhand Police Service as Dy.S.P. after rendering two years of service then the persons irrespective of the category cannot be put below the appellants.
49. This Court has considered the rival submission of the parties on the said issue. This Court is of the view that the grievance of the appellants would have been said to be proper if the appellants would have been placed below the candidates who have secured lesser marks in comparison to that of the appellants.
50. The appellants are claiming seniority over the reserved category candidates on the ground that they have obtained more marks in comparison to that of the reserved category candidates but the said principle of putting the appellants above than the reserved category candidates cannot be said to be proper, reason being that the seniority of the appellants is to be considered from the date of inducting in the service,

i.e., w.e.f. the year 2012 while the candidates who are under the reserved category had joined prior to the joining of the appellants and as per the basic principle to determine the seniority which is to be counted from the date of entry in the service, thus, the said claim of the appellants/writ petitioners cannot be sustainable, accordingly, rejected.

51. The grievance has been raised by raising the issue of one Nisha Murmu who has joined as Dy.S.P. sometime in the year 2011 but the issue of her seniority has been taken into consideration by placing her at the place based upon her marks but that parameter has not been followed in the case of the appellants.
52. Learned Advocate General, in rebuttal, has submitted that the issue of Nisha Murmu was not the subject matter before the learned writ court, as such, the same cannot be allowed to be agitated in the present appeal since the same will be said to be foreign to the pleading.
53. It has also been submitted in addition thereto that the appellants cannot claim parity with the case of Nisha Murmu, since Nisha Murmu was inducted in service in the capacity of Dy.S.P. and her case was of seniority in the same cadre and not in the service.
54. This Court has considered the aforesaid rival submission on the aforesaid issue. The ground with respect to the issue of Nisha Murmu admittedly has not been agitated in the writ petition.
55. The law is well settled so far as the jurisdiction of letter patent appellate court is concerned that the said court is not a court of regular appeal rather it is only having corrective jurisdiction and if two views are possible and

one view has been accepted by the learned writ court, then the view which has been accepted by the learned writ court is to be accepted by the letters patent appellate court. Further, the finding so recorded by the learned writ court is being assailed and hence, the new point is not allowed to be agitated in order to consider the issue of propriety of the view having been taken by the learned writ court. The higher forum is to consider the issue on the consideration given by the learned writ court and if any issue has not been agitated before the original court, then, in absence of any consideration of the aforesaid issue, no consideration is to be given by the higher forum.

56. However, what has been submitted by the learned Advocate General that the case of Nisha Murmu is not at par with the facts and circumstances since she had never shifted her service from Jharkhand Administrative Service to Jharkhand Police Service as Dy.S.P. rather her initial appointment was in the cadre of Dy.S.P.
57. This Court on consideration of the aforesaid fact, is of the view that the fact of Nisha Murmu is not proper to consider for two reasons, i.e., first that the same was not agitated before the writ court and second even on fact of the present case, the case of Nisha Murmu is different.
58. This Court considering the aforesaid reason and adverting to the order passed by the learned Single Judge wherefrom it is evident that the learned Single Judge has taken into consideration that it was not mandatory for the petitioners (appellants herein) to join police service and it was their own choice, they have entered into the police service because of the existing vacancies as such they cannot claim on the basis of circular

of year 1972 that their respective seniority be counted from the year 12.08.2010 i.e. their initial date of appointment in Jharkhand Administrative Service. The learned Single Judge has also taken into consideration that the respective seniority cannot be granted to a person from the date when such person is not born in cadre and the seniority amongst members of the same grade has to be granted from the date of initial entry in the grade.

59. Thus, on the basis of the discussion made herein above this Court is of the considered view that since learned Single Judge has meticulously examined the aforesaid issue by taking into consideration the settled position of law that regular service cannot be reckoned from a date when the employee was not even borne in the service and seniority amongst members has to be counted from the date of initial entry into the said service, requires no interference by this Court.
60. Accordingly, this Court is of the view that the instant appeal lacks merit and as such, stands dismissed.
61. Pending interlocutory application(s), if any, also stands disposed of.

I agree

(Sujit Narayan Prasad, J.)

(Rajesh Kumar, J.)

(Rajesh Kumar, J.)

Saurabh/A.F.R.