



2026:AHC-LKO:18007-DB

**HIGH COURT OF JUDICATURE AT ALLAHABAD  
LUCKNOW**

**SPECIAL APPEAL DEFECTIVE No. - 235 of 2023**

State of U.P. Thru.Prin./Addl.Chief Secy.Deptt.Housing and Urban  
Planning Govt. U.P. Lko.and Anr

.....Appellant(s)

Versus

Anil Kumar

.....Respondent(s)

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|---------------------------|-----------------------------------------------|
| Counsel for Appellant(s)  | : Shobhit Mohan Shukla, C.S.C.                |
| Counsel for Respondent(s) | : Prashant Agarwal, Rupesh Kumar<br>Kasaudhan |

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**WITH**

**SPECIAL APPEAL DEFECTIVE No. - 55 of 2023**

State of U.P. Thru. Prin. Secy. / Addl. Chief Secy. Awas (Anubhag-5)  
Civil Sectr. Lko.

.....Appellant(s)

Versus

Shailendra Singh

.....Respondent(s)

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|---------------------------|-----------------------------------------------------------------|
| Counsel for Appellant(s)  | : Shweta Shukla,                                                |
| Counsel for Respondent(s) | : Prashant Agarwal, Rupesh Kumar<br>Kasaudhan, Surya Kant Singh |

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**RESERVED ON :- 19.02.2026**  
**DELIVERED ON :- 11.03.2026**

**Court No. - 3**

**HON'BLE SHEKHAR B. SARAF, J.  
HON'BLE MANJIVE SHUKLA, J.**

**C.M. Application No. 01 of 2023** (SPLAD No. 235 of 2023)

**C.M. Application No. 01 of 2023** (SPLAD No. 55 of 2023)

1. These are the applications for condonation of delay in filing the aforementioned special appeals, supported with the affidavits.
2. The aforementioned special appeals have been filed with the reported delay of 200 days and 113 days respectively.
3. The appellants have filed the applications for condonation of delay supported with the affidavits wherein effort has been made to explain the delay in filing the special appeals.
4. Objections to the applications for condonation of delay have been filed by the Respondent No. 1.
5. Learned counsel for the Respondent No. 1 has submitted that though the appellants have not given proper explanation in respect of the delay in filing the special appeals but if this Court proceeds to hear the special appeals on merits, he does not have any serious objection, if the delay in filing the special appeals is condoned.
6. We have considered the submissions advanced on behalf of the parties in respect of condonation of delay in filing the special appeals and we are of the view that the delay of 200 days and 113 days respectively in filing the

special appeals, may be condoned in the interest of justice, particularly keeping in view that the learned counsel appearing for Respondent No. 1 does not have any serious objection if the delay is condoned.

7. Accordingly, the applications for condonation of delay in filing the special appeals are **allowed** and the delay in filing the special appeals is hereby condoned.

### **Order on Special Appeals**

1. Heard Shri Sandeep Dixit, learned Senior Advocate assisted by Shri Shobhit Mohan Shukla and Ms. Shweta Shukla, learned counsel for the appellants and Shri Asit Kumar Chaturvedi, learned Senior Advocate assisted by Shri Rupesh Kumar Kasaudhan, learned counsel for Respondent No. 1.

2. The captioned intra-court appeals have been filed by the State-appellants assailing therein the judgment and order dated 06.09.2022 passed by learned Single Judge in Writ - A No. 6064 of 2018, Shailendra Singh Vs. State of U.P. and others and Writ - A No. 10841 of 2018, Anil Kumar Vs. State of U.P. & Others, whereby learned Single Judge had allowed the writ petitions in terms of the judgment rendered by this Court in Writ - A No. 1287 of 2022, Vijay Pal Singh Vs. State of U.P. & Others.

3. Before proceeding to delve into facts and legal issues involved in these special appeals, we find it appropriate to record one categorical admission made by Shri Sandeep Dixit, learned Senior Advocate appearing for the appellants that the facts of the case of Mr. Shailendra Singh i.e.

Respondent No. 1 in Special Appeal Defective No. 55 of 2023 and facts of the case of Mr. Anil Kumar i.e. Respondent No.1 in Special Appeal Defective No. 235 of 2023 are identical to that of the facts of Civil Appeal No. 9412 of 2019, Siraj Ahmad Vs. State of U.P. & Others, decided by the Hon'ble Supreme Court vide its judgment rendered on December 13, 2019.

4. The facts of the case, in brief, are that the Respondent No. 1 in Special Appeal Defective No. 55 of 2023 i.e. Mr. Shailendra Singh was appointed as Junior Engineer on ad-hoc basis vide notification dated July 31, 1986. It is not in dispute that the appointment of Shri Shailendra Singh was made pursuant to a proper advertisement of the posts and after a proper selection process and further, for the said appointment, prior approval of His Excellency, the Governor of the State of U.P. was also obtained but the said appointment was not made in consultation with the U.P. Public Service Commission, as was required under the relevant rules for making regular appointment on the post of Junior Engineer. Mr. Shailendra Singh after taking permission from the competent authority obtained A.M.I.E. degree in the year 1993. The services of the aforesaid Mr. Shailendra Singh were regularized on the post of Junior Engineer on 23.11.2002.

5. Mr. Anil Kumar i.e. Respondent No.1 in Special Appeal Defective No. 235 of 2023 was appointed on the post of Junior Engineer vide notification dated July 31, 1986 on ad-hoc basis. It is not in dispute that the appointment of Mr. Anil Kumar was made pursuant to a proper advertisement of the posts and after a proper selection process and further, for the said appointment, prior approval of His Excellency, the Governor

of the State of U.P., was also obtained but the said appointment was not made in consultation with the U.P. Public Service Commission, as was required under the relevant rules for making regular appointment on the post of Junior Engineer. Mr. Anil Kumar obtained A.M.I.E. degree in the year 1991 and his services on the post of Junior Engineer were regularized on 22.01.1997.

6. It is noteworthy that the State Government, in exercise of power under the U.P. Urban Planning and Development Act, 1973 (hereinafter referred to as 'the Act of 1973') had created different development authorities for different areas in the State of U.P. In the year 1985, by the U.P. Act No. 21 of 1985, the Act of 1973 was amended and Section 5-A was inserted, thereby provision was made that the State Government may at any time, by issuing notification, create one or more Development Authorities Centralized Service for such post other than the post mentioned in Sub-Section 4 of Section 59 of the Act of 1973. The State Government had promulgated the U.P. Development Authorities Centralised Services Rules, 1985 (hereinafter referred to as 'the Rules of 1985') whereby various posts in the development authorities of the State of U.P. became part of the centralized services and one of such service was Engineering service.

7. The Rule 8(3) of the Rules of 1985 initially provided that 50% posts of Assistant Engineer shall be filled through direct recruitment and remaining 50% posts of Assistant Engineer shall be filled in by making promotion from amongst Junior Engineers who possess the requisite qualifications of a qualified Junior Engineer and have completed minimum service of ten

years as qualified Junior Engineer on 1<sup>st</sup> July of the recruitment year. The State Government on March 11, 1994 issued a Government order whereby, for the first time, it was provided that from amongst 50% promotion quota on the posts of Assistant Engineer, 45% posts shall be filled in from the qualified Junior Engineers having ten years service as Junior Engineer to their credit and remaining 5% posts of Assistant Engineer shall be filled in by making promotions of those Junior Engineers who have passed out B.E. or A.M.I.E. examinations.

8. Under the aforesaid 5% quota, eleven posts were earmarked out of which eight posts were required to be filled in by making promotions of Junior Engineers of unreserved category. The Departmental Promotion Committee considered the cases of various Junior Engineers and on its recommendation, State Government vide order dated 18.01.1985 promoted eight Junior Engineers under the degree quota on the posts of Assistant Engineer whose description is given as under:-

| Sl. No. | Name                   | Seniority | Date of Appointment | Year of Obtaining Degree |
|---------|------------------------|-----------|---------------------|--------------------------|
| 1.      | Ajeet Kumar Tyagi      | 89        | 04/02/1980          | 1986                     |
| 2.      | Prabhat Chandra Sharma | 114       | 31/08/1981          | 1986                     |
| 3.      | Sajid Hasan            | 141       | 28/07/1982          | 1994                     |
| 4.      | Sunil Dutt Sharma      | 149       | 19/02/1983          | 1993                     |
| 5.      | Amar Pratap Singh      | 154       | 22/02/1983          | 1993                     |
| 6.      | Zahiruddin             | 160       | 19/02/1983          | 1986                     |
| 7.      | Anil Kumar Mishra      | 188       | 20/04/1983          | 1989                     |
| 8.      | R. P. Singh            | 213       | 20/02/1984          | 1993                     |

9. One Mr. Rajendra Prasad Dwivedi, who was working on the post of Junior Engineer on ad-hoc basis and was having engineering degree, filed Writ Petition No. 3421 (S/S) of 1996 which was partly allowed by learned Single Judge of this Court vide judgment and order dated 19.08.2011. The aforesaid judgment and order dated 19.08.2011 was later on modified vide order dated November 9, 2011 whereby direction was issued that since the Junior Engineers, who have acquired engineering qualification on subsequent dates to that of the engineering degree of Mr. Rajendra Prasad Dwivedi have been promoted on the posts of Assistant Engineer, Mr. Rajendra Prasad Dwivedi be also considered for promotion from the date his juniors have been promoted on the posts of Assistant Engineer.

10. The judgment and order dated November 9, 2011 passed in Writ Petition No. 3421 (S/S) of 1996, later on, was affirmed by a Division Bench of this Court vide its judgment and order dated 13.02.2014 rendered in Special Appeal Defective No. 75 of 2017, whereby special appeal filed by the State of U.P. was dismissed.

11. The State of U.P. preferred Special Leave to Appeal No. 13830 - 13831 of 2014, State of U.P. Vs. Rajendra Prasad Dwivedi & Another but the Hon'ble Supreme Court vide order dated 12.01.2015 had been pleased to dismiss the Special Leave to Appeal. Thereafter, the State of U.P. preferred Review Petition Defective No. 188 of 2015 seeking review of the judgment and order dated November 9, 2011 passed by learned Single Judge in Writ Petition No. 3421 (S/S) of 1996, Rajendra Prasad Dwivedi Vs. State of U.P. & Others, but the said review petition was also dismissed

by the Division Bench of this Court vide a detailed judgment dated May 31, 2016.

12. Shri Rajendra Prasad Dwivedi, pursuant to the judgment and order dated November 9, 2011 passed by learned Single Judge of this Court in Writ Petition No. 3421 (S/S) of 1996, had been granted promotion on the post of Assistant Engineer w.e.f. 18.01.1995.

13. One Mr. Siraj Ahmad, who admittedly was senior to Mr. Rajendra Prasad Dwivedi and was possessing engineering qualification prior to 18.01.1995, claimed promotion on the post of Assistant Engineer w.e.f. 18.01.1995 but his claim was rejected by the State Government vide order dated 14.04.2015. Mr. Siraj Ahmad filed Writ Petition No. 1020 (S/B) of 2015, Siraj Ahmad Vs. State of U.P. & Others, but the Division Bench of this Court dismissed the said writ petition vide judgment and order dated September 11, 2017. The Division Bench in its judgment and order dated September 11, 2017 recorded a finding that since Mr. Siraj Ahmad on 18.01.1995 was working only as an ad-hoc Junior Engineer and was regularized in service on subsequent date i.e. on 23.11.2002, therefore, his claim for promotion on the post of Assistant Engineer w.e.f. 18.01.1995 is not tenable. Mr. Siraj Ahmad challenged the judgment and order dated September 11, 2017 passed in Writ Petition No. 1020 (S/B) of 2015 by filing Civil Appeal No. 9412 of 2019, Siraj Ahmad Vs. State of U.P. & Others, which was allowed by a three Judge Bench of the Hon'ble Supreme Court vide judgment and order dated December 13, 2019. The Hon'ble Supreme Court, in its judgment rendered on December 13, 2019, had

categorically held that Mr. Siraj Ahmad was entitled to be promoted on the post of Assistant Engineer w.e.f. 18.01.1995 and his claim was wrongly rejected on the ground that on the said date, he was working as an ad-hoc Junior Engineer. The State of U.P. preferred Review Petition Diary No. 17966 of 2020 seeking review of the aforesaid judgment and order dated December 13, 2019 but the said review petition was also rejected vide order dated 21.01.2021. It is of utmost importance to take note of the fact that in compliance of the judgment and order dated December 13, 2019 passed by the Hon'ble Supreme Court in the case of **Siraj Ahmad (supra)**, Mr. Siraj Ahmad was granted promotion on the post of Assistant Engineer w.e.f. 18.01.1995 and he had also been given other consequential benefits.

14. After promotions of Mr. Rajendra Prasad Dwivedi and Mr. Siraj Ahmad, one Mr. Vijay Pal Singh, claimed that he was senior to Mr. Siraj Ahmad and he acquired the engineering degree in the year 1987, therefore, he is also entitled to be promoted on the post of Assistant Engineer under 5% quota. Since, the claim of Mr. Vijay Pal Singh was not considered by the State Government, he filed Writ - A No. 1287 of 2022, Vijay Pal Singh Vs. State of U.P. & Others, and the said writ petition had been allowed by learned Single Judge of this Court vide judgment and order dated 06.04.2022 whereby direction was issued to consider the case of Mr. Vijay Pal Singh for promotion on the post of Assistant Engineer under 5% quota and other consequential promotions on the higher posts. The State of U.P. filed Special Leave Petition (Civil) Diary No. 21802 of 2022, State of U.P. Vs. Vijay Pal Singh, but the said Special Leave Petition was dismissed by the Hon'ble Supreme Court vide its order dated 10.08.2022.

15. The State Government, in compliance of the orders passed in the case of Mr. Vijay Pal Singh, had given him promotion on the post of Assistant Engineer by creating a supernumerary post and further promotions on higher posts had also been given to him.

16. Mr. Shailendra Singh, Respondent No. 1 in Special Appeal Defective No. 55 of 2023, and Mr. Anil Kumar, Respondent No. 1 in Special Appeal Defective No. 235 of 2023, also claimed their promotion on the posts of Assistant Engineer on the ground that their juniors have been given promotion by stating that in the seniority list, their names find place at Serial No. 155 and 91 respectively, whereas the juniors namely, Mr. Rajendra Prasad Dwivedi and Mr. Siraj Ahmad, who had already been granted promotion on the posts of Assistant Engineer w.e.f. 18.01.1995, their names find place in the seniority list at Serial No. 177 and 247 respectively. The claims raised by Mr. Shailendra Singh and Mr. Anil Kumar were rejected by the State Government vide orders dated 08.01.2017 and 28.02.2018.

17. In the aforesaid circumstances Mr. Shailendra Singh filed Writ - A No. 6064 of 2018 and Mr. Anil Kumar filed Writ - A No. 10841 of 2018 which were clubbed together and have been decided by a common order dated 06.09.2025, whereby both the writ petitions have been allowed in terms of the judgment and order dated 06.04.2022 passed in Writ - A No. 1287 of 2022, Vijay Pal Singh Vs. State of U.P. & Others.

18. Shri Sandeep Dixit, learned Senior Advocate appearing for the State-appellants has argued that both Mr. Anil Kumar and Mr. Shailendra Singh

were working as ad-hoc Junior Engineers and their services have been regularized on the posts of Junior Engineer w.e.f. 22.01.1997 and 23.11.2002 respectively, therefore, learned Single Judge while allowing Writ - A No. 10841 of 2018 and Writ - A No. 6064 of 2018 in terms of the judgment and order dated 06.04.2022 passed in Writ - A No. 1287 of 2022, Vijay Pal Singh Vs. State of U.P. & Others, thereby directing the respondents to grant promotion to Mr. Anil Kumar and Mr. Shailendra Singh w.e.f. 18.01.1995 and other consequential promotions on the higher post, has committed a manifest error of law, as it is well settled proposition of law that a person cannot be granted promotion on higher post unless his services are regularized on the post in the feeding cadre.

19. It has been argued on behalf of the appellants that it is patently manifest that Mr. Anil Kumar and Mr. Shailendra Singh were not appointed after following due procedure prescribed under the Rules of 1985, as the said rules provide that for regular appointment on the post of Junior Engineer, consultation with the U.P. Public Service Commission is must, whereas the said Mr. Anil Kumar & Mr. Shailendra Singh were appointed on the posts of Junior Engineer on ad-hoc basis on July 31, 1986, and their services were regularized on the said posts on 22.01.1997 and 23.11.2002 respectively, therefore, in fact, they were born in the cadre of Junior Engineer on the date of regularization of their services i.e. on 22.01.1997 and 23.11.2002, therefore, by no stretch of imagination, learned Single Judge could have issued direction for their promotion on the post of Assistant Engineer w.e.f. the date prior to the date of regularization of their services on the post of Junior Engineer. Learned counsel appearing

for the appellants though has admitted that the facts of the case of Mr. Anil Kumar and Mr. Shailendra Singh are identical to that of the facts of the case of **Siraj Ahmad (supra)** decided by the Hon'ble Supreme Court but has submitted that the issue, as to whether a person who is working on the post of Junior Engineer on ad-hoc basis can be promoted on the post of Assistant Engineer w.e.f. a date prior to the date of regularization of his services on the post of Junior Engineer, has not been decided, and thus has stressed upon this Court that the entire controversy may be reconsidered.

20. Shri Sandeep Dixit, learned Senior Advocate appearing for the appellants has also argued that the promotions of Junior Engineers having qualification of B.E. / A.M.I.E. can be considered only if there exists a vacancy under 5% quota meant for the said promotions but learned Single Judge while deciding writ petitions filed by Mr. Anil Kumar and Mr. Shailendra Singh, failed to appreciate that as on date, no vacancy exists in the said quota for unreserved candidates.

21. It has been brought to the notice of this Court that four Junior Engineers, namely, Manoj Kumar Sisodia, Krishna Pal Singh (K.P. Singh), Sanjay Vashist and Mukesh Kumar Raghav, have filed Writ - A No. 5867 of 2022, Writ - A No. 5873 of 2022, Writ - A No. 7513 of 2022 and Writ - A No. 8220 of 2022 respectively, which were clubbed together and have been dismissed by learned Single Judge of this Court vide judgment and order dated 30.10.2023 on the ground that no junior to the petitioners of the said writ petitions have been promoted on the post of Assistant Engineer. It has further been submitted that the aforesaid judgment and

order dated 30.10.2023 has been challenged by filing Special Leave to Appeal (C) No. 1380-1383 of 2024 and Hon'ble Supreme Court vide order dated 23.09.2025 has directed the State Government to provide relevant information on the five points framed in the said order. Further, the State Government has filed its affidavit bringing on record the information sought by the Hon'ble Supreme Court.

22. Shri Sandeep Dixit, learned Senior Advocate appearing for the appellants has thus argued that either this Court may allow the special appeals filed by the State or may grant interim protection to the State-appellants till disposal of the Special Leave to Appeal (C) Nos. 1380-1383 of 2024, Manoj Kumar Sisodia Vs. State of U.P. & Others.

23. Shri Asit Kumar Chaturvedi, learned Senior Advocate appearing for Mr. Anil Kumar and Mr. Shailendra Singh in the special appeals under consideration has vehemently argued that in view of the categorical admission made by learned counsel appearing for the State-appellants that the facts of the cases of Mr. Anil Kumar and Mr. Shailendra Singh are identical to that of the facts involved in the case of **Siraj Ahmad (supra)** decided by the Hon'ble Supreme Court, nothing remains to be decided by this Court in these special appeals, as each and every issue had already been considered and decided by the Hon'ble Supreme Court.

24. It has been argued that the issue raised by the appellants before this Court in these special appeals that Mr. Anil Kumar and Mr. Shailendra Singh may not be given promotion on the post of Assistant Engineer w.e.f. 18.01.1995, had already been considered in detail by the Hon'ble Supreme

Court in the case of **Siraj Ahmad (supra)** wherein it had been categorically held that even if a person after facing proper selection process is working as ad-hoc Junior Engineer, his ad-hoc services shall be counted for his eligibility for promotion on the post of Assistant Engineer and he cannot be denied promotion merely for the reason that his services have not been regularized on the post of Junior Engineer. It has also been argued that the writ petitions filed by Mr. Anil Kumar and Mr. Shailendra Singh have been decided by Hon'ble Single Judge vide judgment and order dated 06.09.2022 in terms of the judgment dated 06.04.2022 passed in Writ - A No. 1287 of 2022, Vijay Pal Singh Vs. State of U.P. & Others, and the decision given in the case of Vijay Pal Singh is based on the judgment rendered by the Hon'ble Supreme Court in the case of **Siraj Ahmad (supra)**, therefore, while deciding these appeals, it is not open for this Court to reconsider the legal and factual issues which have already been settled by the Hon'ble Supreme Court in the case of **Siraj Ahmad (supra)**.

25. Learned counsel appearing for the respondents has also submitted that the argument raised on behalf of the appellants that there is no vacancy under 5% quota meant for promotion on the posts of Assistant Engineer is absolutely misconceived and is liable to be rejected by this Court for two reasons; firstly, if the legitimate claim of a senior person has been ignored and junior person has been given promotion on the higher post, then the senior person is entitled to be promoted w.e.f. the date of promotion of junior person; secondly, the State Government itself, time and again, had created supernumerary posts of Assistant Engineer for making compliance of the directions issued by the Courts for promotion in the cases of **Siraj**

**Ahmad (supra)** and Vijay Pal Singh, and promotions had been granted on those supernumerary posts.

26. Shri Asit Kumar Chaturvedi, learned Senior Advocate in respect of the submissions made on behalf of the appellants that learned Single Judge of this Court had dismissed Writ - A No. 5867 of 2022, Writ - A No. 5873 of 2022, Writ - A No. 7513 of 2022 and Writ - A No. 8220 of 2022 vide judgment and order dated October 10, 2023 and pendency of the Special Leave to Appeal (C) No's. 1380-1383 of 2024, has submitted that once there exists a final judgment passed by three Judge Bench of the Hon'ble Supreme Court in the case of **Siraj Ahmad (supra)** wherein each and every issue involved in these special appeals had already been considered and decided, there is no option left with this Court except to dismiss these special appeals by following the law laid down by the Hon'ble Supreme Court in the case of **Siraj Ahmad (supra)**.

27. We have considered the rival arguments advanced by learned counsels appearing on behalf of the parties and have perused the documents annexed in the special appeals and the writ petitions.

28. This Court finds it apt to record few relevant dates for proper adjudication of the special appeals which are as under:-

(i.) Mr. Anil Kumar i.e. Respondent No. 1 in Special Appeal Defective No. 235 of 2023 was appointed on the post of Junior Engineer on ad-hoc basis on 31.07.1986 and his services on the post of Junior Engineer were

regularized on 22.01.1997. Mr. Anil Kumar had obtained engineering degree in the year 1991.

(ii.) Mr. Shailendra Singh i.e. Respondent No. 1 in Special Appeal Defective No. 55 of 2023 was appointed on the post of Junior Engineer on ad-hoc basis on 31.07.1986 and his services on the post of Junior Engineer were regularized on 23.11.2002. Mr. Shailendra Singh had obtained engineering degree in the year 1998.

(iii.) Mr. Siraj Ahmad i.e. appellant in Civil Appeal No. 9412 of 2019 was appointed on the post of Junior Engineer on ad-hoc basis on 24.08.1987 and his services on the post of Junior Engineer were regularized on 23.11.2002. Mr. Siraj Ahmad had obtained engineering degree in the year 1987.

(iv.) Mr. Rajendra Prasad Dwivedi i.e. petitioner in Writ Petition No. 3421 (S/S) of 1996 was appointed on the post of Junior Engineer on ad-hoc basis on 24.02.1987 and his services on the post of Junior Engineer were regularized on 23.11.2002. Mr. Rajendra Prasad Dwivedi had obtained engineering degree in the year 1993.

29. We find that Mr. Rajendra Prasad Dwivedi, pursuant to an order passed by this Court and on dismissal of the Special Leave Petition against the said order, had already been granted promotion on the post of Assistant Engineer w.e.f. 14.01.1985. We further find that the writ petition filed by Mr. Siraj Ahmad in respect of his claim for promotion on the post of Assistant Engineer w.e.f. 14.01.1985 was initially dismissed by the

Division Bench of this Court, and thereafter, Mr. Siraj Ahmad preferred Civil Appeal No. 9412 of 2019 which was decided by the Hon'ble Supreme Court vide judgment and order dated December 13, 2019, and thereafter, Mr. Siraj Ahmad had also been granted promotion on the post of Assistant Engineer w.e.f. 18.01.1995. It is also note worthy that Mr. Vijay Pal Singh, pursuant to an order dated 06.04.2022 passed by learned Single Judge of this Court in Writ - A No. 1287 of 2022, had also been granted promotion on the post of Assistant Engineer w.e.f. 18.01.1995.

30. From the aforesaid facts of the matter, it is patently manifest that the respondents herein i.e. Mr. Anil Kumar & Mr. Shailendra Singh are admittedly senior to Mr. Rajendra Prasad Dwivedi and Mr. Siraj Ahmad. Learned counsel appearing on behalf of the appellants has categorically admitted before this Court that facts of the case of Siraj Ahmad are identical to that of the facts of the case of Mr. Anil Kumar and Mr. Shailendra Singh but has tried to impress upon this Court that the claim of Mr. Anil Kumar and Mr. Shailendra Singh for their promotion on the posts of Assistant Engineer w.e.f. 18.01.1995, is not justified, as services of both of them on the posts of Junior Engineer have been regularized on the subsequent dates i.e. on 22.01.1997 and 23.11.2002, as it is well settled proposition of law that a person cannot be given promotion on the higher post unless his services on the post in the feeding cadre are regularized.

31. We find that Mr. Siraj Ahmad on 18.01.1995 was working on the post of Junior Engineer on ad-hoc basis but Hon'ble Supreme Court in its judgment rendered in the case of **Siraj Ahmad (supra)**, had considered the

said issue in detail and had held that even if a person is working on ad-hoc basis, he can be considered for promotion on the higher post and thereby had directed the Government of U.P. to grant promotion to Mr. Siraj Ahmad w.e.f. 14.01.1995, as junior to him Mr. Rajendra Prasad Dwivedi had already been granted promotion w.e.f. 14.01.1995. For ready reference, relevant paragraphs of the judgment rendered by the Hon'ble Supreme Court in the case of **Siraj Ahmad (supra)** are delineated as under:-

*"9. Per contra, Mr V. Shekhar, learned Senior Counsel, appearing on behalf the State, submits that under the Rules it was necessary that the appointment was made with concurrence of U.P Public Service Commission. He submits, undisputedly the appellant's appointment was not made with the concurrence of UP Public Service Commission. It is, therefore submitted that as such the appellant's appointment will have to be termed as illegal. He, therefore submits that the High Court has rightly refused to take into consideration the services of the appellant, prior to the date on which his services came to be regularised.*

***10. The facts in the present case are not in dispute. Undisputedly, the appellant's initial appointment in the year 1987 was after the advertisement was issued for the posts in centralised services constituted under the said Rules It is also not in dispute that the appellant was selected after he underwent the entire selection process by competing with other persons, who had also applied for the said post. The only issue that the learned Judges of the Division Bench have found against the appellant is that the appellant's selection was not made in due consultation with the U.P Public Service Commission.***

*11. This Court in State of MP v. Lalit Kumar Verma, after considering a the judgment of the Constitution Bench of this Court in State of Karnataka v Umadevi (3), observed thus: (Lalit Kumar Verma case, SCC p. 581, para 12)*

*"12. The question which, thus, arises for consideration, would be Is there any distinction between "irregular appointment" and "illegal appointment"? The distinction between the two terms is apparent In the event the appointment is made in total disregard of the constitutional scheme as also the recruitment rules framed by the employer; which is "State" within the meaning of Article 12 of the Constitution of India, the recruitment would be an illegal one, whereas there may be cases where, although, substantial compliance with the constitutional scheme as also the rules have been made, the appointment may be irregular in the sense that some provisions of some rules might not have been strictly adhered to."*

***12. It can thus be seen that this Court has held that the distinction between irregular appointment and illegal appointment is clear. It has been held that in the event appointment is made in total disregard to the constitutional scheme and the recruitment rules framed by the employer, where the employer is "State" within the meaning of Article 12 of the Constitution of India, d the recruitment will be illegal one. It has, however, been held that where although, substantial compliance with the constitutional scheme, as also the Rules have been made, the appointment would become irregular inasmuch as some provisions of some rules have been adhered to.***

*13. Subsequently, another Bench of this Court in State of Karnataka v M L Kesari also had an occasion to consider the issue. The Court observed thus e (SCC p. 250. para 7)*

"7. It is evident from the above that there is an exception to the general principles against "regularisation" enunciated in *Umadevi (3)*<sup>6</sup>, if the following conditions are fulfilled:

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.

(ii) The appointment of such employee should not be illegal, even if irregular. Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular."

14. This Court held in *M.L. Kesari* case that where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointment will be considered to be illegal. However, when the person employed possessed the prescribed qualifications and is working against the sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular

15. As already discussed hereinabove, the appellant had applied in pursuance to the advertisement issued by State for the post in the centralised services under the provisions of the said Rules. The appellant had participated in the selection process along with the other competitors. The appellant was possessing the requisite qualification and was selected after competing with others and was appointed against the sanctioned posts for a period of one year. Undisputedly, the appellant thereafter, has continuously rendered his services, till the date of regularisation of his services i.e. on 23-11-2002 and, even thereafter, till date. As such, the appellant's case would be on a much better pedestal than the one which falls for consideration in *M. L. Kesari* case.

16. It can thus be seen that the only issue which is found against the appellant is that prior to appointment there was no concurrence of the U.P Public Service Commission. It can thus be seen that the appointment of the appellant at the most can be termed as irregular and not illegal.

17. It will be apposite to refer to the following observations of the Constitution Bench judgment of this Court in *Direct Recruit Class II Engg. Officers' Assn.*<sup>2</sup>, the Constitution Bench has observed thus: (SCC pp. 725-26, para 13)

"13. When the cases were taken up for hearing before us, it was faintly suggested that the principle laid down in *Patwardhan* case was unsound and fit to be overruled, but no attempt was made to substantiate the plea. We were taken through the judgment by the learned counsel for the parties more than once and we are in complete agreement with the ratio decidendi, that the period of continuous officiation by a government servant, after his appointment by following the rules applicable for substantive appointments, has to be taken into account for determining his seniority, and seniority cannot be determined on the sole test of confirmation, for, as was pointed out, confirmation is one of the inglorious uncertainties of government service depending neither on efficiency of the incumbent nor on the availability of substantive vacancies. The principle for deciding inter se seniority has to conform to the principles of equality spelt out by Articles 14 and 16..... in *Baleshwar Dass v. State of U.P* and *Delhi Water Supply & Sewage Disposal Committee v. R.K. Kashyap* with which we are in agreement. In *Narender Chadha v. Union of India* the officers were promoted although without following the procedure prescribed under the rules, but they continuously worked for long periods of nearly 15-20 years on the posts without being reverted. The period of their continuous officiation was directed to be counted for seniority as it was held that any other view would be arbitrary and violative of Articles 14 and 16. There is considerable force in this view also. We, therefore, confirm the principle of counting towards seniority the period of

*continuous officiation following an appointment made in accordance with the rules prescribed for regular substantive appointments in the service."*

**18. The Constitution Bench in unequivocal terms holds that, if an appointment is made by way of stopgap arrangement without considering the claims of all the eligible persons and without following the rules of appointment, the experience of such appointment cannot be equated with the experience of a regular appointee, because of qualitative difference in the appointment. It however holds that if the appointment is made after considering the claims of all the eligible candidates and the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules made for regular substantive appointments, there is no reason to exclude the officiating service for purpose of seniority.**

19. The Constitution Bench concludes thus: (Direct Recruit Class II Engg. Officers Assn.<sup>2</sup>, SCC pp. 744-45, para 47)

"47. To sum up, we hold that:

(A) Once an incumbent is appointed to a post according to rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

The corollary of the above rule is that where the initial appointment is only ad hoc and not according to rules and made as a stopgap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted."

**20. It can thus clearly be seen that the Constitution Bench in unequivocal terms holds that if the initial appointment is not made by following the procedure laid down by the Rules, but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the Rules, the period of officiating service will be counted.**

**21. It is not in dispute that except the concurrence of the U.P Public Service Commission the appointment of the appellant has been made after following the procedure prescribed under the said Rules. The appellant has, uninterruptedly, served till the regularisation of his service which was made in accordance with the Rules. It can thus be seen that the case of the present appellant is squarely covered by the judgment of the Constitution Bench in Direct Recruit Class II Engg. Officers Assn.<sup>2</sup>**

22. It is further to be noted that the respondent had issued an office memorandum dated 11-3-1994 thereby, providing for relaxation of the condition which prescribed minimum 10 years, service in the post of Junior Engineer Schedule 3 to the said Rules provided that for being eligible to the promotion of Assistant Engineer along with the educational qualification a candidate must possess 10 years' service, in the post of Junior Engineer on 1st July of the selection year. By the said office memorandum, the Government provided that 5% of the posts out of 50% promotional quota are to be reserved by extending relaxation to such of the Junior Engineers, who have passed BE or AMIE examination. It further provided that in case candidates possessing BE/AMIE examination were not available, the post should be filled in from non-Graduate Junior Engineers. As discussed hereinabove, it is to be noted that the Government had also sought information from the development authorities with regard to the number of persons possessing the requisite BE/AMIE degree. In response to the said communication, the Agra Development Authority had intimated the respondent State the name of the appellant being the only person possessing the said qualification.

23. We further fail to appreciate as to how the same High Court could have considered the case of two employees differently when they were similarly circumstanced. It is not in dispute that the present appellant as well as Rajendra Prasad Dwivedi were selected through the same selection process though their orders of appointment differs. It will be appropriate to refer to the observation made by the Allahabad High Court in Writ Petition No. 3421 of 1996 in R.P Dwivedi v State of U.P.<sup>4</sup> which reads thus: (SCC OnLine All paras 6-7)

"6. Upon perusal of the Government Orders dated 26-8-1992 as well as 11-3-1994, I find force in the submission of the petitioner; therefore, I am of the view that as soon as the petitioner obtained the qualification of AMIE in 1993, he became eligible for promotion to the post of Assistant Engineer. Though only gaining the qualification does not create right of promotion, but I am of the view that if thereafter any promotion has been given to others particularly junior to the petitioner, the petitioner is liable to be considered for promotion from the said date along with consequential benefits.

7. In light of the law laid down by the Hon'ble Supreme Court, in the case referred to hereinabove, I hereby also observe that the fact that the petitioner was not confirmed in the service, shall not come in the way of the petitioner's promotion as an impediment and the petitioner's services even on ad hoc basis on the post of Junior Engineer shall be taken into consideration for the purpose of promotion to the higher post. Accordingly a direction is issued to the respondents to consider the petitioner's case for promotion to the higher post from the date of promotion of his junior within two months, after receipt of a certified copy of this order."

24. The above judgment of the learned Single Judge dated 9-11-2011 was carried in appeal before the Division Bench of the said Court. The Division Bench of the Allahabad High Court in Special Appeal No. 75 of 2012 in State of U.P v. Rajendra Prasad Dwivedi in its order dated 13-2-2014 observed thus: (Rajendra Prasad case<sup>12</sup>, SCC OnLine A-I para 12)

"12. On due consideration of rival submissions, we find considerable force in the arguments of respondent. The condition of length of ten years' service was relaxed. The respondent, though appointed on ad-hoc basis as Junior Engineer on 24-2-1987, had obtained the degree of AMIE on 10-10-1993 before Shri Sunil Dutt Sharma and Shri Sajid Hasan who passed the examination in 1994. As the vacancies were available and the private respondent was qualified to be considered for promotion in 1993, he should have been considered even prior to the aforesaid persons."

25. The State had also carried the said matter by way of Special Leave Petitions Civil (CC) Nos. 13830-31 of 2014 before this Court. The SLP also came to be dismissed on 12-1-2015. The State, thereafter, preferred a review petition, seeking review of the judgment of the Division Bench in State of U.P v. Rajendra Prasad Dwivedi by way of Review Petition No. 188 of 2015. The said review petition is also dismissed in State of U.P. v. Rajendra Prasad Dwivedi.

26. The only ground on which the High Court has refused to consider the case of the appellant is that in Rajendra Prasad Dwivedi, the Court had not considered the issue with regard to non-concurrence of the UP Public Service Commission. At the cost of repetition as discussed hereinabove, the appointment of the appellant at the most can be considered as irregular and not illegal.

27. It is to be noted that the appellant has obtained the Bachelor of Science (Engineering) degree in the year 1987, and though Rajendra Prasad Dwivedi had obtained AMIE in 1993, taking into consideration that Sunil Dutt Sharma and Sajid Hasan had obtained the degree of AMIE in 1994, the said Rajendra Prasad Dwivedi was held to be entitled for promotion on 18-1-1995 i.e. the date on which the said Sajid Hasan and Sunil Dutt Sharma were promoted as Assistant Engineer from Junior Engineer. We fail to appreciate the approach of the High Court in denying the promotion to the appellant when all the other three i.e. namely, Rajendra Prasad Dwivedi, Sajid Hasan and Sunil Dutt Sharma were appointed in the year 1987 through the same selection process and though Rajendra Prasad Dwivedi had obtained the degree in 1993 and Sajid Hasan and Sunil Dutt Sharma had obtained the same in 1994, whereas, the appellant had obtained the said degree in 1987.

28. It could thus be seen that in view of the office memorandum dated 11-3-1994, the appellant was entitled to be promoted immediately after the issuance of the said office memorandum as he possessed the requisite degree when the said office memorandum was issued. In any case, the appellant is entitled to be promoted with effect from 18-1-1995 i.e. the date on which the juniors to him were promoted.

29. As already discussed, the non-concurrence with the U.P Public Service Commission, at the most would make the appointment of the appellant irregular and not illegal. We are, therefore,

*of the considered view that the High Court erred in dismissing the petition of the appellant. The appeal deserves to succeed on more than one ground."*

32. Thus, from bare perusal of the judgment rendered by the Hon'ble Supreme Court, it becomes crystal clear that the Hon'ble Supreme Court had made a detailed consideration about the ad-hoc appointment of Mr. Siraj Ahmad on the post of Junior Engineer, and also, whether he can be considered for promotion on the higher post from a date prior to the date of regularization of his services on the post of Junior Engineer, and thereby, it had been held that since ad-hoc appointment of Mr. Siraj Ahmad was made after due publication of the vacancies in the newspaper and a proper selection process with the approval of His Excellency, the Governor of the State, therefore, the said appointment was not an illegal appointment and at the most, it can be termed as an irregular appointment, therefore, Mr. Siraj Ahmad cannot be divested from his legitimate claim of promotion on the post of Assistant Engineer w.e.f. 18.01.1995 i.e. the date on which his junior was given promotion.

33. It is of utmost importance to note it down that there is no dispute that Mr. Anil Kumar and Mr. Shailendra Singh were appointed on ad-hoc basis on the posts of Junior Engineer after going through the same selection process which was adopted in the appointment of Mr. Siraj Ahmad i.e. vacancies were duly advertised in the newspapers and proper selection procedure as contemplated under the Rules was adopted except the consultation with the U.P. Public Service Commission. Learned counsel appearing for the State-appellants has categorically admitted that facts in respect of the procedure of appointment on the post of Junior Engineer on

ad-hoc basis and regularization of services of Mr. Anil Kumar, Mr. Shailendra Singh and Mr. Siraj Ahmad on the dates subsequent to 18.01.1995, are identical. Further, it is also admitted to the State-appellants that Mr. Siraj Ahmad, Mr. Rajendra Prasad Dwivedi and Mr. Vijay Pal Singh are junior to Mr. Anil Kumar and Mr. Shailendra Singh i.e. respondents in the special appeals.

34. The Hon'ble Supreme Court on identical facts in the case of **Siraj Ahmad (supra)** had given its verdict that Mr. Siraj Ahmad must be considered for promotion from the post of Junior Engineer to the post of Assistant Engineer w.e.f. 18.01.1995 i.e. the date prior to date of his regularization of services on the post of Junior Engineer. The law laid down by the Hon'ble Supreme Court in the case of **Siraj Ahmad (supra)** is binding on us, therefore, there is no occasion for this Court to reconsider those issues which had already been considered in its threadbare and had been decided by the Hon'ble Supreme Court.

35. The arguments advanced by learned counsel appearing for the State-appellants that the promotions of Mr. Anil Kumar and Mr. Shailendra Singh can be considered only against 5% quota meant for A.M.I.E. degree holders but there is no vacancy for unreserved category candidates under the said quota, is absolutely misconceived as if claim of an employee has been illegally ignored and juniors have been promoted, the said employee is bound to be promoted from the date his juniors were given such promotion and further we find that the State itself for making compliance of the orders passed in the cases of Mr. Siraj Ahmad and Mr. Vijay Pal

Singh had already created supernumerary posts of Assistant Engineer and had granted them promotions, therefore, there is no occasion for the State to come up with the case that they do not have the vacancy under 5% quota, to deny the promotions to Mr. Anil Kumar and Mr. Shailendra Singh on the posts of Assistant Engineer.

36. Another argument raised by learned counsel appearing for the State-appellants, that the other writ petitions i.e. Writ - A No. 5867 of 2022, Writ - A No. 5873 of 2022, Writ - A No. 7513 of 2022 and Writ - A No. 8220 of 2022 had been dismissed by learned Single Judge of this Court vide judgment and order dated October 10, 2023 and against the said judgment Special Leave to Appeal (C) Nos.1380-1383 of 2024 is pending, therefore, the decision of these special appeals should wait till the decision of the aforesaid Special Leave to Appeal is pronounced, does not appeal to us as we find that in identical facts one civil appeal i.e. the case of **Siraj Ahmad (supra)** had already been decided by the Hon'ble Supreme Court after detailed consideration and the said judgment is binding on us. There is no occasion for this Court to reopen the issues decided by the Hon'ble Supreme Court in the case of **Siraj Ahmad (supra)**.

37. In view of the aforesaid reasons, we are of the view that once it is admitted to the State-appellants that facts of cases of Mr. Anil Kumar and Mr. Shailendra Singh are identical to that of the facts of the case of **Siraj Ahmad (supra)** decided by the Hon'ble Supreme Court, there is no occasion for us to reopen and consider those issues which had already been

decided by the Hon'ble Supreme Court in the case of **Siraj Ahmad (supra)**.

38. Thus, for the aforesaid reasons, both the Special Appeals i.e. Special Appeal Defective No.235 of 2023 and Special Appeal Defective No. 55 of 2023 are hereby **dismissed**.

**11 March, 2026**  
Lokesh Kumar

**(Manjive Shukla,J.)**

**(Shekhar B. Saraf,J.)**