

**IN THE GAUHATI HIGH COURT**  
**(THE HIGH COURT OF ASSAM: NAGALAND: MIZORAM AND ARUNACHAL**  
**PRADESH)**  
**ITANAGAR BENCH**

**W.P.(C) No. 325 (AP) of 2008**

Shri. Himmer Ete,  
 S/o Shri. Minchi Ete,  
 R/o. Sipu Puyi,  
 P.O. & P.S Aalo, West Siang District, Arunachal Pradesh  
 Presently serving as Urban Programme Officer (UPO),  
 Department of Urban Development & Housing,  
 Yingkiong Division, Upper Siang District, Arunachal Pradesh

..... **Petitioner**

***-Versus-***

1. The State of Arunachal Pradesh, represented through  
 The Secretary, Department of Urban Development & Housing, Govt. of  
 Arunachal Pradesh, Itanagar.
2. The Director,  
 Department of Urban Development & Housing, Govt. of Arunachal  
 Pradesh, Itanagar.
3. Shri. Taring Darang,  
 Deputy Director (Officiating),  
 Urban Development & Housing department, Pasighat Division, East  
 Siang District, Arunachal. P. O & P.S Pasighat
4. Shri Marcony Potom,  
 Deputy Director (Officiating),  
 Urban Development & Housing Department, Basar Division, West Siang  
 District, Arunachal. P. O & P.S Basar
5. Shri. V.P. Singh,  
 Deputy Director (Officiating),  
 Urban Development & Housing Department, Bomdila Division, West  
 Kameng District, Arunachal. P. O & P.S Bomdila

..... **Respondents.**

For the petitioner : Mr. N. Ratan,  
: Mr M. Kato,  
: Mr. K.Tasso,  
: Mr. D. Padu,  
: Ms. M. Tang,  
: Mr. B. Nomak,  
: Mr. G. Kato. Adv.

For the respondents : Ms. S. Deka, Adl. Sr. Govt. Adv. A/P,

For the respondents : Mr. P.K. Tiwari  
: Mr. K. Saxena,  
: Mr. L. Tenzin,  
: Mr. K. Dai, Adv. R/No. 3 & 4

Date of hearing : **23.07.2013**

Date of Judgment : **04.11.2013**

**B E F O R E**  
**HON'BLE MR. JUSTICE P.K. SAIKIA**

**JUDGMENT & ORDER (CAV)**

1. In this proceeding the recommendation of screening committee dated 22.03.2001, (23.02.01?), order dated 28.02.2001 as well as order dated 07.02.2005 have been called into question.

*“ In the premises aforesaid, it is respectfully prayed that your Lordship would be pleased to admit this petition, call for records and issue Rule calling upon the respondents to show cause as to why a writ of mandamus or certiorari/or any other appropriate writ, order or direction of like nature should not be issued, directing the respondent authorities to regularize the service of the petitioner as Urban Programme Officer (UPO) or promote him from the date the petitioner became eligible for promotion i.e. 10.03.1999 and/or a writ of mandamus or certiorari and/or any other appropriate writ, order or direction of like nature should not be issued for setting aside the impugned recommendation of the screening Committee vide dated 23.02.2001 and /or why a writ of mandamus or certiorari and/or any other appropriate writ, order or direction of like nature should not be issued for setting aside and quashing the impugned absorption order of the respondents No.3, 4 & 5 vide dated 28.02.2001 and/or why a writ of mandamus or certiorari and or any other appropriate*

*writ, order or direction of like nature should not be issued directing the respondent authorities to review the DPC recommendation dated 07.02.2005 to the extent of regularizing the service of the petitioner as UPO from the date he became eligible for promotion i.e. 10.03.1999 instead of 22.10.2001 when the petitioner became eligible for promotion. and/or why a writ of mandamus certiorari and/or any appropriate writ, order or direction of like nature should not be issued directing the respondent authorities to review the DPC recommendation dated 11.07.2008 to the extent of taking into account the service of the petitioner as UPO from the date he became eligible for promotion i.e., 10.03.1999 instead of 22.10.2001 and/or any other appropriate writ, order or direction of light nature should not be issued direction the authorities to alter/modify the final seniority list dated 16.07.2008 by placing the petitioner above the respondent No.3,4 & 5 in the seniority list and upon cause or causes that may be shown and after hearing the parties, be please to make the Rule absolute and/ or pass other order or orders as Your Lordship may deem fit and proper”.*

2. Heard Mr. N. Ratan, learned counsel for the petitioner. Also heard Ms. S. Deka, learned Addl. Sr. Government Advocate for the respondent No. 1 & 2 as well as Mr. P.K. Tiwari, learned counsel appearing for the respondent No. 3 & 4.

3. The facts which are stated in the writ petition and which are necessary for the disposal of the present proceeding are that the petitioner is a B.Tech. Civil Engineer from the North-East Regional Institute Science & Technology (in short NERIST) Nirjuli, Arunachal Pradesh and was initially appointed as Junior Engineer (in short J.E) under Public Work Department (PWD), Govt. of Arunachal Pradesh vide order dated 04.02.1994. Accordingly, he joined the PWD department. Govt. of Arunachal Pradesh as J.E on 10.03.1994.

4. The respondent No. 3 Shri. Taring Darang joined as J.E in Irrigation & Flood Control department, Govt. of Arunachal Pradesh on 10.06.1994 whereas respondent No. 4 Shri. Marcony Potom and respondent No. 5 Shri. V.P Singh too joined the PWD, Govt. of Arunachal Pradesh as J.E. on 09.10.1992 and 19.09.1981 respectively. It may be stated that respondent No.3 and 4 are the degree holders in Civil Engineering whereas the respondent No. 5 is stated to be a Diploma holder in Civil Engineering.

5. In 1996, a new department, called Urban Development & Housing department (in short, the Housing department) was created by Government of Arunachal Pradesh and a draft Service Rules was also put in place to take care of initial recruitment etc. under such Draft Recruitment Rules of 1998, 50% of the UPO posts were to be filled up by direct recruitment and remaining 50% by way of promotion from the AUPOs /deputation/transfer.

6. Since the department did not have all the officers/ staff required to man a nascent department, many officers from other departments were invited to join the new department on deputation basis. The petitioner too applied for the post of Assistant Programme Officer (in short, AUPO) as well as Urban Programme Officer (in short, UPO) and, vide its letter dated 10.12.1997, authorities had appointed him as AUPO on deputation basis. Although the respondent No.3, 4 and 5 were working as J.E in their respective department, they were all appointed as UPO in the Housing department on deputation basis.

7. It has been pointed out that whereas the post of UPO is equivalent to Asst. Engineer, the post of AUPO is equivalent to J.E in other departments. Under the Draft Service Rules, a degree holder AUPO was required to put in minimum five years of service and a diploma holder AUPO was to put in 10 years service to become eligible for promotion to the post UPO. But the respondent No. 3, 4 & 5, who had worked as J.E. in the rank of AUPO in their respective department and who did not have requisite qualification to be appointed as UPO, were appointed as UPO in Housing department on deputation basis.

8. Since the respondent No. 3, 4 & 5 did not have requisite qualification for being appointed as UPO in the department aforesaid and since they were appointed as UPO on deputation basis in the Housing department without having requisite qualification, their very initial appointments were illegal. Since their initial appointment order(s) were illegal, all subsequent order(s) regularizing them as UPO in the Housing department w.e.f. 23.02.2001 are also equally illegal and all those order(s), are, therefore, liable to be set aside and quashed.

9. The petitioner was permanently absorbed in the department aforesaid as UPO w.e.f. 29.12.1997 vide order dated 05.02.2001. In the order aforesaid, it was clarified that service experience of the petitioner was to be reckoned from the date of his joining in the parent department which, according to the petitioner, signifies that the service period rendered by him in parent department are to be counted even for the purpose of counting the length of his service for promotion to the post of UPO.

10. In that connection, it has been submitted that since he was allowed to count past service experience as J.E in the parent department, since he joined the parent department on 10.03.1994 in the rank of AUPO, under the Draft Recruitment Rules, he became eligible for promotion to the post of UPO with effect from 10.3.1999.

11. In the meantime, a departmental Screening Committee in its meeting held on 23.02.2001 considered the case of respondent No. 3, 4 and 5 for absorption and it most arbitrarily recommended the absorption of private respondents as UPOs against the quota meant for departmental candidate without considering the fact that the posts against which the private respondents were absorbed were meant for departmental candidate to be filled up by promotion and only in the event of non-availability of departmental candidates for promotion, those posts can be filled up by way of deputation/transfer.

12. Since on 23.2.2001, on which the Screening Committee by its resolution had recommended the absorption of private respondents as UPO, the petitioner had all the requisite qualification for consideration for promotion to the post of UPO, such resolution, being not in consonance with the Draft Service Rules is illegal, arbitrary and discriminatory.

13. The further case of the petitioner is that vide order dated 22.10.2001, the petitioner was promoted to the rank of UPO on functional basis. Being aggrieved on his giving officiating promotion as UPO w.e.f. 22.10.2001, he submitted representation dated 8<sup>th</sup> August, 2003 wherein he prayed for

regular promotion w.e.f. 10.3.99. In due course, his representation was considered but vide order dated 24.02.2005, he was regularized as UPO w.e.f. 22.10.2001 instead of regularizing his service as of UPO w.e.f. 10.3.99 when he became eligible for promotion to the post of UPO.

14. In the meantime, the regular recruitment of 2006 came into being which replaced the draft Service Rules. The State respondents thereafter, a duly constituted committee to consider the inter-se-seniority of UPOs in Housing department which adopted a resolution on 11.07.2008 where petitioner was shown junior to all the private respondents though he became eligible for promotion to the post of UPO w.e.f. 10.3.99 and although the respondents were absorbed as UPO only w.e.f. 23.2.2001.

15. Thereafter, the final seniority list dated 16.7.2008 was published where private respondents were placed at Serial No. 3, 4 and 5 whereas the petitioner was shown at Sl. No. 6 although, as stated above, he acquired qualification for being promoted to the post of UPO long before the private respondents was absorbed permanently in the Housing Department.

16. Since he became eligible for promotion to the post of UPO w.e.f. 10.03.1999, since despite his having the required qualification for being considered for promotion to the post of UPO, the State respondents had illegally appointed the private respondents and since the private respondents were appointed as UPO on deputation basis against the quota meant for departmental candidate, the petitioner comes up before this court with the present application seeking the reliefs as aforesaid.

17. In support of his case, the learned counsel for the petitioner has referred me to the decisions of the Apex court in the case of Sub-Inspector Rooplal Versus Lt. Governor reported in (2000) 1 SCC 644 and in Direct recruit Class-II Engineering Officers Association Versus State of Maharashtra, reported in (1990) 2 SCC 715.

18. The State-respondents and private respondents, viz. 3 and 4 have filed their counter affidavits separately. The respondents did not deny some of the

factual aspects made in the petition under Article 226 of the Constitution of India. Thus, the claims of the petitioner that he, being a degree holder in Civil Engineering joined the PWD as J.E. on 10.3.1994, that respondents 3 and 4 too being the degree holders in Civil Engineering too joined IFCD and PWD on 10.6.94 and 09.10.94 respectively and that respondent No. 5 being the diploma holder in Engineering joined the PWD on 19-9-1981, are not disputed by the respondents,

19. That the petitioner joined the housing department on 29.12.1997, that the petitioner was permanently absorbed as AUPO w.e.f. 29.12.97 vide order dated 05.02.2001, that respondents 3, 4 and 5 initially joined the Housing Department as UPO on deputation basis on 30.12.1997, 16.6.98 and 22.07.1998 respectively, that they were permanently absorbed in Housing department as UPO w.e.f. 23.02.2001 vide order dated 28.02.2001 and that vide order dated 22.10.2001, the petitioner was allowed to function as UPO on officiating basis have also not be disputed by the respondents.

20. That the service of the petitioner as UPO has been regularised w.e.f. 22.10.2001, vide order dated 24.02.2005 and that the post of UPO in the Housing Department both under the Draft Rules and new Rules were to be filled up on 50:50 basis between the direct recruit and promotee and that only in absence of qualified departmental candidate for filling up the quota meant for the departmental candidates, such posts may be filled up by absorption/deputation have also not be denied by the respondents

21. However, the respondents particularly, respondents 3 and 4 vehemently contend that only for his joining the PWD on 10 03.1994, only for his absorption in the Housing Department AUPO w.e.f. 29.12.1997 and only for a clause containing in his absorption order that his service experience will be counted from the date of joining the parent department, he cannot claim that he became eligible for promotion w.e.f. 10.09.1999.

22. It has again been stated by the respondents that one cannot claim promotion as a matter of right. It is prerogative of the department to admit or deny promotion depending upon a range of factors including satisfactory

performance of the incumbent concerned. In that connection, the respondents has relied on the decision on this Court in the case of Nawab Amanukh & Ors., Versus State of Assam reported in 1996(2) GLT 654.

23. The private respondents further contend that there are certain amounts of ambiguity in the Draft Service Rule regarding the eligibility of the AUPOs for promotion to the post of UPO. Since there was a great deal of ambiguity in the Draft Recruitment Rules, the subsequent legislation had clarified that ambiguity. Such a position becomes clear when one reads both the Rules together. Though under the Draft Rules an AUPO could qualify for promotion to the post of UPO once he completed five years/ten years of service as AUPO depending on his educational qualification, it did not define what type of services were required for being qualified for promotion to the post of UPO.

24. In order to clarify such ambiguity, the new service rules define what type of the service would be required to qualify for consideration for promotion to the post of UPO. According to New Recruitment Rules , in order to be eligible for promotion to the post of UPO , an AUPO needs to serve the qualified length of service on regular basis which was conspicuously absent in the Draft Recruitment Rules. Learned counsel for the private respondents, contends that when one legislation suffers from some ambiguity, one may look at the subsequent legislation to remove the ambiguity of the old legislation.

25. According to learned counsel for the respondent No. 3 & 4, when the Draft Rules and new Rules are read together, it would appear clear that in order to get promotion to the post of UPO one must serve continuously at least five years as AUPO, and not in any other capacity. Since the petitioner was born in the grade of AUPO in the Housing Department only w.e.f. 29.12.97, therefore, in the terms of Service Rules aforementioned, he became eligible for consideration for promotion to the post of AUPO only w.e.f. 29.12.02.



26. It has again been contended that the petitioner had initially preferred the present round of litigation in 2008. In the original petition, the petitioner did not array the respondent No. 3, 4 and 5 as parties. The said petition was allowed accepting the claim of the petitioner therein requiring the State respondents to promote the petitioner to the rank of UPO on regular basis w.e.f. 10.03.1999. Since such a decision affected the interest of the private respondents, they challenged the same by the way of writ appeal No. 13(AP) of 2009 which was disposed of with the following direction:

“Since the impugned judgment is found to have been passed in violation of the principles of natural justice, it is not sustainable in the eyes of law. The impugned judgment is hereby set aside. Having regards to all the relevant considerations, including the interest of justice and on consideration of the submissions made by the writ petitioner’s counsel, we consider that it will be proper and just to remand the case back to the learned Single Judge so that the writ petitioner may take necessary steps for impleading the necessary parties as well as for bringing all the essential facts to the notice of the court and thereby the learned Single Judge may decide all the issues involved in the case after giving reasonable opportunities of being heard to all the concerned necessary parties. Accordingly, the said case being WP(C) No. 3235(AP)/2008 is to be placed before the available learned Single Judge for proceeding afresh. These appeals stand disposed of.”

27. In the original petition, the petitioner, however, made no prayer for review of recommendation of DPC held on 07.02.2005 which resulted in the order dated 24.02.2005 promoting the petitioner to the rank of UPO w.e.f. 22.10.2001. Similarly no prayer was made questioning the legality of the recommendation made by the Screening Committee on 23.02.2001 which resulted in order dated 28.02.2001 absorbing as many as four UPO on deputation permanently w.e.f. 23.02.2001.

28. Since such prayers were made in the present proceeding without taking leave of the court, same is liable to be rejected on that count alone inasmuch as it violates the dictum Rule 17 order VI-of CPC-, more particularly proviso to the Rule aforesaid--argues learned counsel for the private respondents.

29. The further case of the private respondents is that this proceeding seeking review of the order dated 07.02.05 as well as questioning the validity of resolution dated 23.02.2001 as well as the order dated 28.02.2001 was made with a delay of five years and since such delay in approaching the court

remains nearly unexplained, the petitioner, after a gap of 5 years, cannot validly agitate such a matter even if such resolution suffers from some illegality.

**30.** It has also been contended that since the time of adoption of DPC resolution dated 07.02.2005 and subsequent order taken thereon on 24.02.2005 to the filing of present round of litigation in 2010, a lot of things which had occurred during the time, above, and a lot of things have already been settled including the status of the private respondents in the grade of UPO and these things have been settled once for all. It is an established principle of law that settled matter cannot be allowed to be unsettled. This is another reason why present proceeding needs to be rejected.

**31.** In order to support her various contentions , Ms. G.Deka learned counsel for the petitioner too draws my attention to the decisions, rendered in :-

1. *AIR 1999 SC 1510 (B.S. Bajwa –VS- The State of Punjab),*
2. *AIR 1974 SC 2271 (P.S. Sadasivaswamy -versus- State of Tamil Nadu),*
3. *AIR 2013 SC 454 (Bhupen Hazarika -versus- State of Tamil Nadu),*
4. *1997 (2) GLT 654 (Nawab Amanukh & Ors. -Versus- State of Assam).*
  
6. *1999 (8) SCC 381 ( Ramwar Prasad –VS- MD, UP Rajkiya Nirman Nigam) and*

**32.** On the other hand to support his various contention, Mr. P.K Tawari, learned counsel for the respondent No.3 & 4 has referred me to the following decisions:-

- 1 (1998) 6 SCC 720 (B.V. Sivaiah Vs. K. Addanki Babu),
2. (1997) 2 SCC 617 (SBI Vs. Govindrao).
3. AIR 1969 SC 1089 (1094) (Yogendra Nath Naskar Vs. Commissioner of Income Tax, Culcatta),
4. AIR (1988) 2 SCC 902 (R. Prabha Devi –Vs- Government of India),
5. (1998) 6 SCC 549 (Scooters India Vs. Vijay E.V. Eldred),

## 6. (1998) 2 SCC 523 (B.S Bajwa Vs. State of Punjab &amp; Ors.)

33. I have carefully considered the rival submissions, advanced by the learned counsel for the parties. Before we proceed further, one needs to know how far the contention of private respondents that the provision of Draft Rule 1998 vis-a-vis the eligibility for promotion to the rank of UPO being ambiguous and how far the allegation that such ambiguity is being clarified by subsequent Recruitment Rules of 2006 are found tenable on facts available on record.

34. In that context, let me examine whether it is permissible under the law to look into the subsequent legislation when a particular provision/matter is found to be ambiguous in previous legislation so as to understand true import and meaning of a particular provision in the old legislation which is said to be ambiguous. In that regard, one may look into the decision of Hon'ble Supreme Court of the country in the case of Jugendra Nath (supra). The relevant parts of the decisions are reproduced below:-

*" I think it is clearly established in Attorney General v. Clarkson, 1900 -1 QB 156 at pp. 163, 164 that subsequent legislation may be looked at in order to see the proper construction to be put upon an earlier Act where that earlier Act is ambiguous. I quite agree that subsequent legislation if it proceeded on an erroneous construction of previous legislation cannot alter that previous legislation ; but if there be any ambiguity in the earlier legislation, then the subsequent legislation may fix the proper interpretation which is to be put upon the earlier Act."*

35. On reading of decision in Jugendra Nath (supra), one would find that when a particular provision of legislation is found ambiguous, it is permissible under the law to look into the subsequent legislation dealing with same matter to ascertain true connotation and meaning of a particular provision in the old legislation afflicted with ambiguity.

36. So situated, let me come back to our case and let me see if there was any ambiguity in the draft Service Rules of 1998 qua eligibility criteria for promotion to the post of UPO. To appreciate the same well, I propose to reproduce the provisions in Column 11 & Column 12 of the Draft Service Rules and Recruitment Rules of 2006 respectively.

Column 11 : 50 percent by promotion, from AUPO who have completed 5(five) years **of service** for degree holder in Civil Engineering or 10 (ten) years for Diploma in Civil Engineering.

2. 50 percent by direct recruitment to be conducted by the APPSC on the basis of written examination followed by Viva- voice, 80 percent of the posts meant for direct recruitment shall be reserved for APST candidates.

Column 12 : By promotion from amongst the Assistant Urban Programmed Officers of the Department who have completed eight years of **regular service for diploma holder and five years of regular service for degree holder in the grade** provided that irrespective of seniority in the cadre of Assistant Urban Programme Officer, promotion to the post of Urban Programme Officer shall be considered in order of seniority of completion of respective qualifying services, failing which by transfer on deputation/absorption from central/State Government/Statutory Bodies/Public Sector Undertaking fulfilling the following conditions....”

a) Holding analogous posts of Urban Programme Officer/Assistant Urban Programme Officer.

(b) Having 8(eight) years of regular service for diploma holders and 5(five) years of regular service for degree holders in the grade.

(c) the period of deputation shall ordinarily not exceed 3 years.

37. On a careful perusal of the two Rules above in juxtaposition, one would find that the column 11 in old Rule which dealt with eligibility criteria for promotion to the post of UPOs had some amount of ambiguity since the draft Rules did not specify the nature of service which an AUPO was required to render to be eligible for promotion to the post of UPO. Since there was ambiguity in eligibility criteria in matter of promotion to the post of AUPO to UPO, the Recruitment Rule of 2006, however, clarified such ambiguity saying clearly that for being promoted to the post of UPO, one must have 5 years of regular service in the rank of AUPO in case of degree holders (emphasis supplied by me) and 8 years in case of diploma holders.

38. Coming back to our case, I have found that the petitioner was permanently absorbed as AUPO in the Housing Department on 29.12.1997 and, therefore, he was born as AUPO in Housing department only on 29.12.1997 and as such, he was required to complete 5 years of regular service as AUPO from such point of time to be eligible for promotion to the post UPO. Such being the position, he became eligible for promotion to the aforesaid post w.e.f. 29.12. 2002, only, and not a day before. Despite above the position, the petitioner was regularised as UPO w.e.f. 22.10.2001.

39. On the other hand, the private respondent No. 3, 4 & 5, who had initially joined the Housing Department as UPO on deputation basis on

30.12.1997, 16.6.98 and 22.07.1998 respectively, were permanently absorbed as UPO w.e.f. 23<sup>rd</sup> Feb, 2001, vide order, dated 28.2.2001. Therefore, they are undoubtedly senior to the petitioner in the grade of UPO in Housing department and being so, the petitioner cannot claim that he is senior to the private respondents in the rank of UPO and therefore, his claim that he is illegally deprived of such seniority cannot be accepted as claim as having any legal basis.

40. Here, it is worth noting that the petitioner has placed enormous reliance on absorption order dated 05.02.2001 to say that as per clause No. 1 of the aforesaid order, his service experience was to be counted from the date of his joining in the Housing Department and basing on such a clause, It has, now, been contended that his service experience for the purpose of promotion to the rank of UPO needs to be counted-----not from the date of his joining in the Housing Department----- but----- from the date on which he joined the parent department.

41. Our forgoing discussion has now made it more than clear that one can be eligible for promotion to the post of UPO only when he renders minimum 5 yrs of regular service in the grade of AUPO in case of Degree holder in Civil Engineering and 10 years in case of Diploma Engineer. That being so, his past service in the PWD as Junior Engineer cannot be counted for the purpose counting the length of service for promotion to the post of UPO although it may be counted for some other service benefits including pension etc.

42. One may note here that when one did not possess requisite qualification for promotion to a higher post, he cannot validly make any claim for promotion although one may enjoy the senior most position. Since the petitioner did not have requisite qualification for promotion to the post of UPO, he cannot be considered for promotion to the post of UPO on the date on which the private respondents were absorbed in Housing department as UPO.

43. In that connection, we may also pursue the decision rendered by the Hon'ble Supreme Court in the case of R. Prabha Devi (supra). The relevant part is reproduced below:-

*"The prescribing of an eligibility condition for entitlement for consideration for promotion is within the competence of the Rule making authority. This eligibility condition has to be fulfilled by the Section Officers including senior direct recruits in order to be eligible for being considered for promotion. When qualifications for appointment to a post in a particular cadre are prescribed, the same have to be satisfied*

*before a person can be considered for appointment. Seniority in a particular cadre does not entitle a public servant for promotion to a higher post unless he fulfills the eligibility condition prescribed by the relevant rules. A person must be eligible for promotion having regard to the qualifications prescribed for the post before he can be considered for promotion. Seniority will be relevant only amongst persons eligible. Seniority cannot be substituted for eligibility nor can it override it in the matter of promotion to the next higher post."*

44. In view of what we have discussed herein before, I have found that the ratio laid down by the Apex Court of the Country in the case of Sub-Inspector Roolal (supra) as well as in the case of Direct Recruitment (supra), have no application to the case in hand since on the date on which the respondents were permanently absorbed in the Housing department, the petitioner did not acquire the requisite qualification to be considered for promotion to the post of UPO.

45. The learned counsel for the respondents has pointed out that DPC resolution dated 07.02.2005 and the consequential order dated 24.02.05 regularising his officiating promotion to the rank of UPO w.e.f. 22.10.2001 and the resolution dated 23.02.2001 as well as the consequential order dated 28.02.2001 absorbing as many as 5 UPOs permanently in the Housing including the present private respondents were not questioned in the original proceeding initiated in 2008. Such resolution/orders are questioned for the first time in the proceeding which the petitioner had initiated in 2010.

46. Thus, the prayer for review of the resolution dated 07.02.2005 as well as consequential order passed on 24.02.2005 was made after a gap of 5 yrs from the time when such resolution/order came into existence. On the other hand, resolution dated 23.02.2001 and consequential order passed on 28.02.2001 were challenged after a gap of 10 years from the time when such resolution came into being. No plausible explanation was rendered as to why the petitioner did not approach this court in time. Such a conduct on the part of the petitioner has always been looked down upon by the courts. This is another reason why the present petition is liable to be dismissed-----argues the learned counsel for the private respondents.

47. In that connection, I have perused the decisions, relied on by the parties, particularly by respondents. In SBI versus Govindrao (supra), in B.V. Sivaiah (supra) and also in Scooters India (supra), the Hon'ble Supreme Court repeatedly held that when the petitioner approaches the Writ Court with inordinate delay, in normal circumstances, such court would not invoke its

extraordinary jurisdiction in aid of the party who found was sleeping over his right for a long period.

48. I have considered the relevant facts in the light of decisions rendered in the aforementioned cases. On making such an exercise, I have found that when the petitioner chose to assail the resolution dated 07.02.2005 and consequential orders passed thereon after a gap of more than five years. On the other hand, the resolution dated 23.02.2001 and order passed on such resolution were challenged after a gap of almost 10 years.

49. No explanation was found forthcoming from the side of the petitioner as to why he did not approach the court in time. That being the position, I am constrained to hold that the present round of litigation has been initiated with enormous and inordinate delay. Thus, in my considered opinion, owing to such delay, the prayer, made herein proceeding, cannot be granted since it will lead to a lot of complications and difficulties. Therefore, on this count also the prayer of the petitioner is liable to be rejected.

50. I have also found that the petitioner did not approach the court in time seeking redress of his alleged grievances/difficulties. By that time he chose to come up with the present round of litigation seeking review etc. of resolution/ and orders aforesaid, a gap ranging from 5 to 10 years had passed by which allowed very many matters which occurred over those long years to settle for ever. It is a settled proposition of law that a matter once settled cannot be allowed to be unsettled. On this count too, the present proceeding is required to be dismissed.

51. In that connection, we can rely on the decision of Hon'ble Supreme Court in the case of P.S Sadasivaswamy versus State of Tamil Nadu reported in (1975) 1 SCC 152. The relevant part is reproduced below:-

*...."It is not that there is any period of limitation for the courts to exercise their powers under Article 226 nor is it that there can never be a case where the court cannot interfere in a matter after the passage of certain length of time. But it would be a sound and wise exercise of discretion for the courts to refuse to exercise their extraordinary powers under Article 226 in the case of persons who do not approach expeditiously for relief and who stand by and allow things to happen and then approach the court to put forward stale claims and try to unsettle the settled matters".*

52. The learned counsel for the respondents also contends that the petitioner has incorporated some prayers which were not there in the original petition. But they have incorporated such prayers in the second round of litigation and that too without obtaining prior the leave of the court which is not permissible under the law. On this count too, according to the learned counsel for the respondents, the present proceeding is liable to be dismissed. Since we have also found that the present proceeding is liable to be dismissed on some other very valid reasons, I am not inclined to prove this matter any further.

53. In view of our forgoing discussion, I am to hold that the present proceeding is liable to be dismissed.

54. Resultantly, the present proceeding is dismissed, of course without any cost.

**JUDGE**

*Kevi*