

documents as per law and issue fresh documents consistent with his changed name. Learned Single Judge has also issued a direction to the Secretary, Ministry of Home, Government of India and the Chief Secretary, Government of U.P., Lucknow to create appropriate legal and administrative framework to ensure that both Governments work in concert to achieve the end of making identity related identity documents removing anomalies therein. In fact, these are policy matters exclusively in legislative/ executive domain.

32. In view of specific administrative order, the jurisdiction to read down or hold any regulation as arbitrary, unconstitutional and/ or violative of fundamental right guaranteed by the Constitution only vests with the Division Bench in appropriate cases.

33. Even otherwise, as observed hereinbefore on factual matrix of the matter, the writ petitioner had no case on merits.

34. For all the aforesaid reasons, we are satisfied that the judgment of the learned single judge cannot be sustained.

35. The special appeal stands allowed. The judgment and order dated 25.05.2023 of the learned Single Judge passed in Writ-C No. 3671 of 2022 (Md Sameer Rao Vs. State of U.P. and 2 others) is **set aside**. The writ petition stands **dismissed**.

(2025) 2 ILRA 648

**ORIGINAL JURISDICTION
CIVIL SIDE**

DATED: LUCKNOW 04.02.2025

BEFORE

THE HON'BLE ATTAU RAHMAN MASOODI, J.

THE HON'BLE SUBHASH VIDYARTHI, J.

Writ - A No. 3770 of 2023
connected with
Writ - A No. 3769 of 2023

**Jai Prakash Chand & Ors. ...Petitioners
Versus
State of U.P. & Anr. ...Respondents**

Counsel for the Petitioners:
Apoorva Tewari, Aditya Tewari

Counsel for the Respondents:
C.S.C.

(A) Service Law - Government Employment - Merger - Seniority and Promotion - Challenge to the validity of the Employees of Entertainment Tax Department (Service Cadres of Officers, Inspectors, and Other Employees) in the related Cadres of Commercial Tax Department - Uttar Pradesh Government Servant (Discipline and Appeal) Rules, 1999 - Rule 7 - The U.P. Government Servant Seniority Rules, 1991 - Clause 4(h) - 'substantive appointment' - Uttar Pradesh Goods and Services Tax Act, 2017 - Section 174 , Uttar Pradesh Merger Rules, 2022 - Rule 2, Rule 3(3), Rule 3(4), Rule 4(4), Rule 4(5), Rule 4(7), The Constitution of India - Article 311 - Change in chances of promotion does not violate Article 14 of the Constitution - Judicial review of government policy decisions is limited and should not interfere unless the policy is arbitrary, irrational, or unconstitutional - Merger of employees into a new department is a policy decision of the government and cannot be challenged unless it violates statutory or constitutional provisions - Seniority and promotion are subject to the new rules of the merged department. (Para - 47 to 56)

Petitioners were originally appointed as Entertainment Tax Inspectors - later promoted to higher positions - U.P. Goods and Services Tax Act repealed the U.P. Entertainment and Betting Tax Act - Entertainment Tax Department was abolished - State Government

merged employees into Commercial Tax Department through a policy decision - petitioners were placed at the bottom of seniority list in their respective cadres of Commercial Tax Department under Merger Rules - challenged placement - ground - arbitrary, violated Articles 14 and 16 of Constitution - affected their promotional prospects - State Government contended - only employees of Entertainment Tax Department merged into Commercial Tax Dept. and not posts of Entertainment Tax Dept. - seniority had to be determined under new cadre rules of Commercial Tax Department. **(Para - 33 to 48)**

HELD: - Merger Rules, 2022, are upheld as valid and do not violate Articles 14, 16, and 21 of the Constitution. Placement of the petitioners in the Merger Rules, 2022 is a part of policy decision and the petitioners have no locus to question the policy decision taken by the State Government. Substantive appointment and promotions of petitioners shall be considered from 21.07.2022 instead of 24.04.2018. **(Para - 45,48,49,56)**

Petition dismissed. (E-7)

List of Cases cited:

1. B. Manmad Reddy & ors. Vs Chandra Prakash Reddy & ors., (2010) 3 SCC 314
2. S. Sivaguru Vs St. of Tamil Nadu & ors. & other connected appeals, (2013) 7 SCC 335
3. A.Satyanarayana & ors. Vs S. Purushottam & ors., (2008) 5 SCC 416
4. Bihar St. Electricity Board & ors. Vs Dharamdeo Das, 2024 (2) SLJ 498
5. St. of U.P. & ors. Vs Ashok Kumar Srivastava & anr.,(2014) 14 SCC 720
6. Indian Airlines Officers' Assn.Vs Indian Airlines Ltd. & ors. & other connected appeals, (2007) 10 SCC 684
7. The St. of Mysore & ors. Vs G. N. Purohit & ors., MANU/SC/0459/1967

8. Ramchandra Shankar Vs St. of Maha. & ors., (1974) 1 SCC 317

9. Air Commodore Naveen Jain Vs U.O.I. & ors. , 2019 (10) SCC 34

10. St. of U.P. & ors. Vs Principal, Abhay Nandan Inter College & ors., (2021) 15 SCC 600

11. Fertilizer Corporation Kamgar Union (Regd.), Sindri & ors. Vs U.O.I. & Ors., (1981) 1 SCC 568

12. Directorate of Film Festivals & ors. Vs Gaurav Ashwin Jain & ors., (2007) 4 SCC 737

13. Indian Railway Catering & Tourism Corp. Ltd. Vs Indian Railway Major & Minor Caterers Association & ors., (2011) 12 SCC 792

14. Jacob Puliyeel Vs U.O.I. & ors., 2022 SCC OnLine SC 533

(Delivered by Hon'ble Attau Rahman Masoodi, J.)

(1) Heard Sri Apoorva Tewari, learned Counsel for the petitioners and Sri Akash Sinha, learned Standing Counsel appearing for the State-respondents in both the writ petitions.

(2) In the aforesaid two writ petitions, the petitioners have prayed for declaring the **Employee of Entertainment Tax Department (Service Cadres of Officers, Inspectors and Other Employees) in the related cadres of Commercial Tax Department, Uttar Pradesh Merger Rules, 2022** [in short, referred to as '**Rules, 2022**'] *ultra vires* to Articles 14, 16 and 21 of the Constitution of India. Besides this, the petitioners of Writ-A No. 3770 of 2023 working on the post of Entertainment Tax Officer have claimed promotion on the post of Assistant Commissioner, whereas the petitioners of Writ-A No. 3769 of 2023 working on the post of Assistant Commissioner have claimed promotion on

the post of Deputy Commissioner. Therefore, they are being taken up together and decided by a common order.

(3) The grievance raised in the aforesaid two writ petitions is that on enforcement of The U.P. Goods & Services Tax Act, 2017, the service benefits which had accrued to the petitioners in the Entertainment and Betting Tax Department are liable to be granted in G.S.T. department on merger and they be promoted on the next higher post as and when the promotion falls due in the G.S.T. department.

(4) The facts briefly stated are as follows:-

(5) All the petitioners were previously governed under U.P. Entertainment and Betting Tax Act, 1979 [briefly, it is stated as '**Entertainment Tax Act**'] and they joined their services in the said Department during the period 1996-1997 and until 2017, they were promoted to the next higher level posts.

(6) On 01.07.2017, The U.P. Goods & Services Tax Act, 2017 [briefly, referred to as '**GST Act**'] was promulgated and came into force with immediate effect. By virtue of the provisions of Section 174 of the GST Act, the Entertainment Tax Act was repealed alongwith some other Acts, therefore, the need for re-organization and merger of the officers/employees of Entertainment Tax Department on compatible posts in G.S.T. department arose.

(7) Taking a considerate view to protect the services of the employees of the Entertainment and Betting Tax Department, the State Government took a policy

decision to merge the employees of the Entertainment and Betting Tax Department against the posts of Equivalent Pay Matrix available in the Commercial Tax Department.

(8) After much deliberations, the State Government, acting upon the recommendations dated 23.05.2017 of the Committee headed by the Additional Commissioner, Entertainment and Betting Tax Department, issued a notification dated 24.04.2018 whereby the employees of the Entertainment and Betting Tax Department were merged into the available equivalent posts in the Commercial Tax Department and while abolishing the said department, all the rights and duties of the Entertainment and Betting Tax Commissioner were vested in the Commissioner, Commercial Tax.

(9) Thereafter, on 12.07.2018, 31.12.2018, 18.12.2019, 22.10.2019 and 22.09.2020, the State Government directed that until amalgamation of Service Rules are made in respect of all the employees, promotions against the existing vacancies in the Entertainment Tax Department shall be made from amongst the Officers of Entertainment Tax Department in terms of the existing Service Rules of the Entertainment and Betting Tax Department.

(10) The State Government in purported exercise of the power under the Proviso to Article 309 of the Constitution of India has thereafter framed the "Employee of Entertainment Tax Department (Service Cadres of Officers, Inspectors and Other Employees) in the related cadres of Commercial Tax Department, Uttar Pradesh Merger Rules, 2022" which were made effective from 21.07.2022.

(11) Learned counsel for the petitioners has submitted that the impugned Rules, 2022 are unjust, arbitrary and unconstitutional as much as they create a sub-classification without any reasonable nexus by identifying the employees of erstwhile Entertainment Tax Department on the basis of their origin, i.e., birthmark. Rule 1(3) of the impugned Rules, 2022 restricts its applicability only to the employees of the erstwhile Entertainment Tax Department. Such identification on the basis of birthmark of employees is completely unjust and impermissible as held by the Apex Court in the cases of **B. Manmad Reddy and others v. Chandra Prakash Reddy and others [(2010) 3 SCC 314]** and **S. Sivaguru v. State of Tamil Nadu and others & other connected appeals [(2013) 7 SCC 335]**.

(12) It is further submitted that Rule 3(3) of the impugned Rules, 2022 provides a new definition of the ‘Substantive Appointment Date’ for the employees of the erstwhile Entertainment Tax Department and it states that ‘Substantive Appointment Date’ means the date of appointment on the post held on notification dated 24.04.2018.

(13) The aforesaid definition runs contrary to the definition of the substantive appointment as per the U.P. Government Servant Seniority Rules, 1991. Clause 4(h) of the U.P. Government Servant Seniority Rules, 1991 defines ‘substantive appointment’ as an appointment, not being an *ad hoc* appointment, on a post in the cadre of Service made after selection in accordance with the Service Rules relating to that service. It is submitted that while formulating the impugned Rules, 2022 the petitioners who have put in more than 20-25 years of service in the Entertainment

Tax Department are being treated to be directly appointed in the Commercial Tax Department as on 24.04.2018.

(14) It is submitted that the decision of not counting the past service rendered by the petitioners in their original cadre has no reasonable nexus to the object sought to be achieved by the impugned Rules, 2022, and therefore, the Merger Rules are completely arbitrary and unconstitutional.

(15) It is also submitted that while drawing equivalence between the posts of District Entertainment Tax Officer in the Entertainment Tax Department and Commercial Tax Officer in the Commercial Tax Department, the respondents have erred in not considering the basic difference in the structure of both the cadres. In the Commercial Tax Department, Commercial Tax Officer is the entry level post whereas in the Entertainment Tax Department, Inspector is the entry level post. An Inspector is eligible to be promoted to the post of District Entertainment Tax Officer after completion of 7 years of qualifying service, whereas a Commercial Tax Officer is eligible to be promoted to the post of Assistant Commissioner on completion of 7 years of qualifying service. Hence the equivalence drawn between the two posts is completely misplaced and arbitrary. The following table clarifies the criteria for promotion/selection and qualifying service for promotion in both the departments:-

S l. N o.	Stru cture	Criteria for promotion/ selection		Qualifying service for promotion	
		Enterta inment	Com mer-	Entert ain-	Com mer-

		Tax Department	cial Tax Department	ment Tax Department	cial Tax Department
1.	Entertainment Tax Inspector	75% Direct recruitment 25% Promotion from Clerical Cadre	No Inspector Care	75% Direct recruitment 25% - 5 years	No Inspector Cadre
2	Entertainment Tax Officer/ Commercial Tax Officer	100% Promotion from Inspector	50% Direct recruitment 50% Promotion from Clerical Cadre	7 years	50% Direct recruitment 50% - 5 years
3	Assistant Commissioner	100% Promotion from Officer	50% Direct recruitment 50% Promotion from Clerical	3 years	Direct recruitment 50% - 7 years

			cal Cadre		
4	Deputy Commissioner	100% Promotion from Assistant Commissioner	100% Promotion from Assistant Commissioner	2 years	7 years
5	Joint Commissioner	100% Promotion from Deputy Commissioner	100% Promotion from Deputy Commissioner	2 years	5 years

(16) Further submission of the learned counsel for the petitioners is that if the Merger Rules, 2022 are allowed to prevail then almost all of the petitioners will attain the age of superannuation even before they will be able to attain the qualifying service to become eligible for even consideration for promotion, whereas as per their erstwhile Service Rules, 1992, which for all practical purposes remain in existence, all of them are eligible to be considered for promotion.

(17) All the Assistant Commissioners in the erstwhile Entertainment Tax

Department became qualified to be considered for promotion as per their own Rules, 1992 between 01.07.2021 to 01.07.2023, whereas if the impugned Rules, 2022 prevail then all of the petitioners and other Assistant Commissioners in the erstwhile Entertainment Tax Department will attain the age of superannuation before they can even complete their qualifying service of 7 years which is prescribed in the relevant Service Rules of Commercial Tax Department. The condition of all the Entertainment Tax Officers in Writ-A No. 3770 of 2023 in the erstwhile Entertainment Ax Department is almost the same.

(18) It is further submitted that the State Government had sought an expert opinion from the Indian Institute of Management regarding cadre restructuring of the Commercial Tax Department. However, it proceeded to notify the impugned Rules, 2022 without considering the opinion of the Indian Institute of Management, Lucknow.

(19) His further submission is that Rule 4(3)(2) of the impugned Rules, 2022 place the petitioners as junior-most in their year of recruitment which denies the petitioners any fair and reasonable consideration for promotion to the next higher post in perpetuity, which means that in every selection year, the merged employees of the Entertainment Tax Department shall be treated to be juniors to the employees of the Commercial Tax Department appointed in the same selection year. The placement of the employees of erstwhile Entertainment Tax Department at the bottom is completely in violation of Articles 14 and 16 of the Constitution of India.

(20) Further submission of the learned counsel for the petitioners is that Rule 5 of the Rules, 1991 provides that a Government Servant is entitled to count his seniority with effect from his initial appointment and a Government Servant appointed as a result of subsequent selection shall be junior to the persons appointed on the result of previous selection. However, the provisions of Rule 4 (3) (2) of the impugned Rules provide that employees of the Entertainment Tax Department shall necessarily be junior to the employees of Commercial Tax Department appointed in the same selection year irrespective of the date of their appointment.

(21) It is also submitted that Hon'ble Supreme Court of India has time and again held in its various judgments that although a mere chance of promotion is not a fundamental right but a right to be considered for promotion is a fundamental right. Any policy whereby all the avenues for promotion in respect of a category of employees for all times to come are nullified, and it would be hit by Article 16 of the Constitution of India. Reliance has been placed on the decision of the Apex Court in *A. Satyanarayana and others v. S. Purushottam and others* [(2008) 5 SCC 416].

(22) In paragraph - 16 of the counter affidavit, the respondents have asserted that only the employees of the Entertainment Tax Department have been merged into the Commercial Tax Department and not the posts of the Entertainment Tax Department. In reply thereto, the petitioners in paragraph - 11 of their rejoinder affidavit have asserted that it is evident from the minutes of the meeting dated 05.05.2017 that the merger of employees of the

Entertainment Tax Department was made along with the posts that they were holding and no separate posts were created in the Commercial Tax Department. The respondents have thereafter filed another short counter affidavit in response to the rejoinder affidavit of the petitioners. However, the respondents have not refuted the contents of paragraph 11 of the rejoinder affidavit of the petitioners. It is a settled proposition of law that in the absence of a specific denial to a pleading, it is considered as admitted.

(23) Learned counsel for the petitioners has submitted that such classification is completely baseless and it achieves no purpose except for prejudicing the interest of employees of the erstwhile Entertainment Tax Department with respect to their promotion. Further, the impugned Rules, 2022 are unconstitutional as they provide for principles for determination of seniority of employees of the Entertainment Tax Department in contra distinction to the general principles as applicable to all government servants in the State of U.P. as per the U.P. Government Servant Seniority Rules, 1991.

(24) On the other hand, learned counsel for the respondents have submitted that after enforcement of The Goods & Services Tax Act, 2017 on 01.07.2017, the State Government issued Government Order dated 24.04.2018 whereby the Entertainment and Betting Tax Department was abolished and all rights and duties of the Department were vested into the Commissioner, Commercial Tax.

(25) Learned Standing Counsel has further submitted that in pursuance of the Government Order dated 24.04.2018, a Committee was constituted under the

Chairmanship of Special Secretary, U.P. Government in which the Officers of Personnel Department, Finance, Law and Justice were nominated as Members to discuss the various issues related with the employees of erstwhile Entertainment and Betting Tax Department. In the said Committee, the representatives of the Officers of erstwhile Entertainment and Betting Tax Department and Commercial Tax Department were also nominated. The Committee after due consultation and consideration of the representations given by the Office Bearers of both the departments submitted its report on 19.07.2019. Pursuant to the recommendations of the Committee dated 19.07.2019, the petitioners were given posting in the Commercial Tax Department vide Order dated 02.07.2019. Later on, the U.P. Public Services Commission ratified the draft Merger Rules on 26.04.2022 and vide Notification dated 21.07.2022, the Merger Rules were notified with immediate effect.

(26) While elaborating his submissions, the learned Standing Counsel has drawn our attention towards the Merger Rules and has submitted that Rule 2 of the Merger Rules, 2022 specifically deals with the overriding effect. Rule 3(2) clearly lays down that the Service Rules governing the merging employees means service rules governing the post of related service cadre of Commercial Tax Department. Rule 3(3) defines the date of **‘Substantive Appointment’** as the date of appointment to the post held on the date of Notification dated 24.04.2018.

(27) Rule 3 (4) of the Merger Rules, 2022 defines the ‘cadre’ which means the group of posts available in the related service cadre of Commercial Tax

Department and Entertainment Tax Department at the time of commencement of these Rules, but for the Inspector Cadre means the group of posts merged in the Commercial Tax Department as dead cadre by Notification dated 09 March, 2019.

(28) The learned Standing Counsel has next submitted that since the employees of the Entertainment and Betting Tax Department were born in the equivalent cadre of the Commercial Tax Department for the first time by merger notification dated 24.04.2018 and the law on this aspect has crystallized that seniority can only be given from the date when an employee is born into the cadre. This position has been crystallized by Hon'ble the Apex Court in the cases of ***Bihar State Electricity Board and others v. Dharamdeo Das [2024 (2) SLJ 498]*** and ***State of Uttar Pradesh and others v. Ashok Kumar Srivastava and another [(2014) 14 SCC 720]***. Thus the submission of the learned counsel for the respondents is that looking at the administrative exigency and the aim of protecting the services of the petitioners, the date of merger notification was taken as 'Substantive Appointment Date'.

(29) Further submission of learned Standing Counsel is that Rule 4(4) clearly states that after commencement of the Merger Rules, 2022, promotion and other service matters of related post shall be decided under the concerning Rules of service cadre of the Commercial Tax Department. The Rules governing the petitioners as of today are the Trade Tax Rules, 1983 as Merger Rules, 2022 is a onetime measure to protect the service of the petitioners and not special Service Rules for them and Rule 4(5) of the Merger Rules, 2022 clarifies the submission of the State that the services of the merged

employees will be governed by the concerned Service Rules governing the cadre. Rule 4(7) of the Merger Rules, 2022 plays a pivotal role in preserving and protecting the continuity of services of the petitioners. Generally, an employee is born into the service or a cadre of service by two methods - (1) direct appointment and (2) promotion. But in case of administrative exigency, in order to protect the services of the petitioners, their services were merged into the existing cadre of the Commercial Tax Department. Hence their date of merger is being treated as appointment in the related service cadre of Commercial Tax Department to maintain the continuity of service. Further, the continuity of service has been maintained throughout and the petitioners' appointments have not been treated as fresh appointments. Thereafter, vide order dated 11.01.2023, a Committee was constituted to determine the seniority of the District Entertainment Tax Officer (DETO) as per the Merger Rules in the Commercial Tax Department. It is further stated that the seniority list dated 18.08.2023 has been finalized in which the petitioners have been placed as per their seniority in accordance with the provisions of Rule 3(3) of the Merger Rules, 2022.

(30) Learned counsel for the respondents have further submitted that the Merger Rules, 2022 were framed in order to protect the services of the employees of the Entertainment and Betting Tax Department.

(31) His further submission is that since it is a policy decision of the Government and in order to protect their services, the impugned Merger Rules, 2022 have been framed. Thus, no prejudice has been caused to the petitioners and both the writ petitions are liable to be dismissed.

(32) We have considered the submissions made by the learned Counsel for the parties and perused the material available on record.

(33) Initially, petitioners of Writ-A No. 3770 of 2023 who were appointed on the post of Entertainment Tax Inspector in the department of Entertainment and Betting Tax in the year 1997 were governed under U.P. Entertainment and Betting Tax Act, 1979 and with the passage of time, they were promoted to the post of District Entertainment Tax Officer in the year 2016. Details of the petitioners are given hereunder:-

Sl. No.	Name of the petitioner	Date of joining in the department	Date of promotion of Entertainment Tax Officer	Date of retirement
1.	Jai Prakash Chand	24.07.1997	25.10.2016	31.01.2025
2.	Piyush Kumar Yadav	01.08.1997	25.10.2016	30.1.2029
3.	Kalpna Kanna ujia	04.07.1997	02.11.2016	30.04.2027

(34) The details of petitioners of Writ-A No. 3769 of 2023 are given hereunder:-

Sl. No.	Name of the petitioner	Date of joining	Date of promotion	Date of promotion	Date of retirement
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	oner	the department	as Entertainment Tax Officer	as Assistant Commissioner	
1.	Roshan Lal	22.11.1996	09.04.2015	01.07.2020	31.03.2025
2.	Prabhat Chaudhary	13.06.1997	04.01.2016	01.07.2020	30.04.2028
3.	Sursh Chandra Singh Bisen	31.07.1997	04.01.2016	01.01.2021	31.01.2027

(35) Since the matter revolves around the provisions of Section 174 in The U.P. Goods and Services Tax Act, 2017, it is necessary to reproduce it as under:-

“174. Repeal and saving

(1) Save as otherwise provided in this Act, on and from the date of Commencement of this Act,

(i) The Uttar Pradesh Value Added Tax Act, 2008, except in respect of goods included in the Entry 54 of the State List of the Seventh Schedule to the Constitution,

(ii) The Uttar Pradesh Tax on Entry of goods into local areas Act, 2007

*(iii) **The Uttar Pradesh Entertainment and Betting Tax Act, 1979***

(iv) The Uttar Pradesh Advertisements Tax Act. 1981

(v) *The United Provinces Sales of Motor Spirit, Diesel Oil and Alcohol Taxation Act, 1939*

(vi) *The Uttar Pradesh Sugarcane (Purchase Tax) Act, 1961 (hereafter referred to as the repealed Acts) are hereby repealed.*”

(36) On commencement of The U.P. Goods & Services Act, 2017, the aforesaid six Acts, including **the Uttar Pradesh Entertainment and Betting Tax Act, 1979**, have been repealed, whereunder the petitioners discharged their duties. In view of this, the State Government took a policy decision to merge the employees of the Entertainment and Betting Tax Department into the posts of Commercial Tax Department w.e.f. 24.04.2018. However, the policy decision was not crystallized through the exercise of statutory Rules until the Merger Rules, 2022 were framed and notified w.e.f. 21.07.2022. The promotional benefits until framing of the Merger Rules were carried out as per the previous Rules of Entertainment Tax Department.

(37) At the cost of repetition, it is mentioned that overriding effect has been mentioned in Rule 2 of the Merger Rules. Rule 3(3) of the Rules defines the date of ‘**Substantive Appointment**’ as the date of appointment at the post held on the date of Notification dated 24.04.2018. Rule 3 (4) of the Merger Rules, 2022 defines the ‘cadre’ of posts in the Commercial Tax Department and the Entertainment Tax Department. Rule 4(4) provides that promotion and other service matters of related posts shall be decided under the concerning Rules of service cadre of the Commercial Tax Department. Rule 4(5) of the Merger Rules, 2022 clarifies that the services of the merged employees shall be governed by the concerned Service Rules

governing the cadre. Rule 4(7) of the Merger Rules, 2022 plays a pivotal role in preserving and protecting the continuity of services of the petitioners. Hence their date of merger is being treated as the date of appointment in the related service cadre of Commercial Tax Department to maintain the continuity of service. Further, the continuity of service has been maintained throughout and the petitioners’ appointments have not been treated as fresh appointments.

(38) At this stage, it is necessary to look into the order dated 19.05.2023 passed by this Court which reads as under:-

“Connect and list with Writ-A No.3769 of 2023 in the week commencing 24th July, 2023.

Notice on behalf of respondents has been accepted by the office of learned Chief Standing Counsel.

Considering the imminent problem being faced by the petitioners who prior to their merger in the Commercial Tax Department were working in the Entertainment Tax Department, in relation to their promotional avenues, we direct that the respondents shall file their counter affidavit within a period of six weeks. We expect that within the time being stipulated herein, respondents shall file counter affidavit considering the urgency in the matter.”

(39) Pursuant to the order dated 19.05.2023, the State Government has filed its counter affidavit wherein the respondents have asserted that only the employees of the Entertainment Tax Department have been merged into the Commercial Tax Department and not the posts of the Entertainment Tax Department.

(40) Furthermore, in order to satisfy the query of this Court, instructions dated 24.10.2024 were placed before this Court wherein the exact number of posts available in the year 2018 and 2024 were stated. Thus, a bare perusal of the instructions dated 24.10.2024 would demonstrate that not a single post has been increased in the Commercial Tax Department. Hence, no post of erstwhile Entertainment and Betting Tax Department has been transferred to the Commercial Tax Department. This position is fortified from the averments made in para - 16 of the counter affidavit as stated in earlier part of the judgment.

(41) Moreover, in the midst of hearing of the aforesaid writ petitions, this Court vide order dated 04.12.2023 directed the learned Counsel for the State to obtain complete instructions as to how the members of service belong to U.P. Entertainment and Betting Tax Service can be equitably provided promotional avenues in the new Merger Rules, 2022 in the Commercial Department. The order dated 04.12.2023 reads as under:-

“1. Heard Sri Apoorva Tewari learned counsel for the petitioners and Sri Akash Sinha learned Standing Counsel for the State.

2. Learned counsel for the State has prayed for four days' time to obtain complete instructions as to how the members of service belonging to U.P. Entertainment and Betting Tax Service can be equitably provided promotional opportunity as regards eligibility under the new rules i.e. Employees of Entertainment Tax Department (Service Cadres of Officers, Inspectors and Other Employees) in the related Cadres of Commercial Tax Department, Uttar Pradesh Merger Rules,

2022 at par with the members of service in commercial tax department on merger of the two.

3. List/put up on 11.12.2023 amongst ten cases.

4. Sri Kuldeep Pati Tripathi, learned Additional Advocate General shall assist the Court in the matter.”

(42) Pursuant to the order dated 04.12.2023 passed by this Court, the learned Counsel for the State has reiterated the stand taken by the State Government earlier.

(43) From the material available on record and from the submissions made by the learned counsel for the parties, it is clear that till framing of Merger Rules, 2022 the petitioners have no grievance as they continued to enjoy the service benefits as per the Uttar Pradesh Entertainment and Betting Tax (Gazetted) Service Rules, 1992. On account of Merger Rules, 2022, when they have been placed at the bottom of the seniority list in the respective cadres of the Commercial Tax Department as on 24.04.2018, they raised their grievance by means of the aforesaid writ petitions stating that the action taken by the State Government is hit by Article 14 of the Constitution of India.

(44) For the sake of argument, if the petitioners had been retrenched from the erstwhile department in view of repeal of the Act, on coming into force of U.P. G.S.T. Act, 2017, their fate would be in dilemma. Instead, the State Government took a conscious decision to merge all the employees of the Entertainment & Betting Tax Department into the Commercial Tax Department.

(45) Although the reasons for placement of the employees of the

Entertainment and Betting Tax Department junior to the Commercial Tax employees in the service year has been mentioned above, but the placement of the petitioners in the Merger Rules, 2022 is a part of policy decision and the petitioners have no locus to question the policy decision taken by the State Government.

(46) The only grievance raised before this Court is that the placement of the petitioners in the Commercial Department has caused prejudice. In this regard, reliance placed by the learned counsel for the respondents on *Indian Airlines Officers' Assn. v. Indian Airlines Ltd. and others & other connected appeals [(2007) 10 SCC 684]* is fully applicable as it has been held that the whole scheme cannot be said to be arbitrary/discriminatory merely because some employees suffer in terms of promotion/seniority and ultimately their chances of promotion are affected.

(47) So far as the chances of promotion of petitioners is concerned, the law on this point has crystallized as chances of promotion are not a condition of service and change in chances of promotion do not hit Article 14 of the Constitution of India. The contention of the learned counsel for the respondents is fortified by the law laid down by the Apex Court in the cases of *The State of Mysore and others v. G. N. Purohit and others [MANU/SC/0459/1967]*, *Ramchandra Shankar v. State of Maharashtra and others [(1974) 1 SCC 317]*, *Air Commodore Naveen Jain v. Union of India & others [2019 (10) SCC 34]* and *Bihar State Electricity Board (supra)*.

(48) For the reasons stated above, it is amply clear that there is no violation of Articles 14, 16 & 21 of the Constitution of

India and since nothing in the Merger Rules, 2022 violates the aforesaid Articles, the prayer made by the petitioners in both the writ petitions for declaring it *ultra vires* has no substance and the same has no force in law as the matter pertains to policy decision taken by the State Government. The decision of the Apex Court in the case of *State of Uttar Pradesh and others v. Principal, Abhay Nandan Inter College and others [(2021) 15 SCC 600]* placed by the learned Counsel for the State is applicable to the present case.

(49) Since the decisions taken by the State Government are purely policy decisions, they have to be examined in light of the catena of judgments passed by the Apex Court where the scope of interference by the courts in matters of policy is well established. Judicial review is the cornerstone of constitutionalism and is a part of our basic structure. Despite this understanding, the Supreme Court has time and again reiterated how, by way of judicial review, policy decisions of the State should not be interfered with unless they are grossly arbitrary or irrational as there is a need to maintain separation of powers.

(50) In *Fertilizer Corporation Kamgar Union (Regd.), Sindri & Ors. v. Union of India & Ors., (1981) 1 SCC 568*, the Apex Court has observed as under:-

"35. A pragmatic approach to social justice compels us to interpret constitutional provisions, including those like Articles 32 and 226, with a view to see that effective policing of the corridors of power is carried out by the court until other ombudsman arrangements — a problem with which Parliament has been wrestling for too long — emerges. I have

dwelt at a little length on this policy aspect and the court process because the learned Attorney-General challenged the petitioner's locus standi either qua worker or qua citizen to question in court the wrongdoings of the public sector although he maintained that what had been done by the Corporation was both bona fide and correct. We certainly agree that judicial interference with the administration cannot be meticulous in our Montesquien system of separation of powers. The court cannot usurp or abdicate, and the parameters of judicial review must be clearly defined and never exceeded. If the Directorate of a government company has acted fairly, even if it has faltered in its wisdom, the court cannot, as a super-auditor, take the Board of Directors to task. This function is limited to testing whether the administrative action has been fair and free from the taint of unreasonableness and has substantially complied with the norms of procedure set for it by rules of public administration."

(51) In ***Directorate of Film Festivals & Ors. v. Gaurav Ashwin Jain & Ors.***, (2007) 4 SCC 737, the Apex Court had observed as follows:-

"16. The scope of judicial review of governmental policy is now well defined. Courts do not and cannot act as Appellate Authorities examining the correctness, suitability and appropriateness of a policy, nor are courts advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of the Constitution, or opposed to any statutory provision or manifestly arbitrary. Courts cannot interfere with policy either on the ground that it is

erroneous or on the ground that a better, fairer or wiser alternative is available. Legality of the policy, and not the wisdom or soundness of the policy, is the subject of judicial review (vide Asif Hameed v. State of J&K [1989 Supp (2) SCC 364], Sitaram Sugar Co. Ltd. v. Union of India [(1990) 3 SCC 223], Khoday Distilleries Ltd. v. State of Karnataka [(1996) 10 SCC 304], BALCO Employees' Union v. Union of India [(2002) 2 SCC 333], State of Orissa v. Gopinath Dash [(2005) 13 SCC 495 : 2006 SCC (L&S) 1225] and Akhil Bharat Goseva Sangh (3) v. State of A.P. [(2006) 4 SCC 162])."

(52) The aforementioned observation had also been made in ***Indian Railway Catering and Tourism Corporation Ltd. v. Indian Railway Major and Minor Caterers Association and Ors.***, (2011) 12 SCC 792. The Apex Court held that policy decisions of the Government should not be interfered with unless the policy is contrary to provisions of statutory rules or of the Constitution. In the said case, no illegality or unconstitutionality had been shown and the Apex Court held as under:-

"2. By the impugned order, the High Court has interfered with the Catering Policy of 2005 in respect of reservations. By now it is a well-settled principle of law that policy decisions of the Government should not be interfered with in a routine manner unless the policy is contrary to the provisions of statutory rules or of the Constitution. Nothing has been brought to our notice that the Policy is contrary to the provisions of the statutory rules or the Constitution. For this simple reason, we set aside the order of the High Court impugned herein."

(53) Recently, in ***Jacob Puliyel v. Union of India and Ors.***, 2022 SCC

OnLine SC 533, though the Supreme Court was broadly examining policy decisions pertaining to health, it had observed that in exercise of their judicial review, Courts should not ordinarily interfere with the policy decisions of the Executive unless the policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness, etc. The relevant portion of the judgment stating the same is as under:-

"21. We shall now proceed to analyse the precedents of this Court on the ambit of judicial review of public policies relating to health. It is well settled that the Courts, in exercise of their power of judicial review, do not ordinarily interfere with the policy decisions of the executive unless the policy can be faulted on grounds of mala fide, unreasonableness, arbitrariness or unfairness etc. Indeed, arbitrariness, irrationality, perversity and mala fide will render the policy unconstitutional. It is neither within the domain of the courts nor the scope of judicial review to embark upon an enquiry as to whether a particular public policy is wise or whether better public policy can be evolved. Nor are the courts inclined to strike down a policy at the behest of a petitioner merely because it has been urged that a different policy would have been fairer or wiser or more scientific or more logical. Courts do not and cannot act as appellate authorities examining the correctness, suitability and appropriateness of a policy, nor are courts advisors to the executive on matters of policy which the executive is entitled to formulate. The scope of judicial review when examining a policy of the Government is to check whether it violates the fundamental rights of the citizens or is opposed to the provisions of

the Constitution, or opposed to any statutory provision or manifestly arbitrary."

(54) More over, till the Merger Rules were framed and approved by the U.P. Public Service Commission, the petitioners were treated as employees of erstwhile department and accordingly, all the petitioners were promoted as and when the vacancy occurred in their respective grades. On framing of Rules, vide Order No. 3828 dated 11.01.2023, a Committee was constituted to determine the seniority of the District Entertainment Tax Officer as per the Merger Rules in the Commercial Tax Department and a seniority list has been finalized on 18.08.2023 and the petitioners have been placed as per their seniority in accordance with the provisions of Rule 3(3) of the Merger Rules, 2022.

(55) For the reasons stated above, no case is made out by the petitioners and the case laws cited by the learned counsel for the petitioners are not applicable.

(56) Accordingly, both the writ petitions for the relief of challenge against the Merger Rules, 2022 are **dismissed**. However, it is provided that since the Merger Rules have come into effect from 21.07.2022 and some of the petitioners have been given promotion during the period 24.04.2018 to 21.07.2022, **the date of substantive appointment and status of the petitioners shall be treated as on 21.07.2022 in the Commercial Tax Department on the promotional posts, instead of 24.04.2018 what has been prescribed in the Merger Rules, 2022.**

(57) No order as to costs.
