

(2004) 09 KAR CK 0046

In the Karnataka High Court

Case No : Writ Petition No"s. 45490-91 of 2003

C. Channe Gowda and Another

APPELLANT

Vs

High Court of Karnataka and Others

RESPONDENT

Date of Decision : 10-09-2004

Acts Referred:

Constitution of India, 1950 — Article 226, 227, 229, 229 (1), 229 (2)
High Court of Karnataka Service (Conditions of Service and Recruitment) Rules, 1973
— Rule 7

Citation : (2004) ILR (Kar) 4633

Hon'ble Judges : H. Billappa, J;B. Padmaraj, J

Bench : Division Bench

Advocate : P.S. Rajagopal, for the Appellant; V.Y. Kumar, GA for R1, K. Ragavendra Rao and N. Ravindra Reddy for R2 and S.N. Ashwathanarayana, for R3, for the Respondent

Judgement

B. Padmaraj, J.—The two petitioners herein, who are working as Court officers on the establishment of the 1st respondent, being aggrieved by the notification dated 2/5.9.2003 issued by the 1st respondent in so far as it promotes Respondents 2 and 3 as Assistant Registrars ignoring the seniority of the petitioners, have presented these two Writ Petitions. Since common questions of law and facts are involved and the relief sought by the petitioners is against a single notification, these two Writ Petitions filed by the two different petitioners are conveniently dealt with together and they are accordingly disposed of by this common order.

1A) The averments made in the Writ Petition are the following:

2. In exercise of the powers conferred by Article 229(1) and (2) of the Constitution of India, the Hon"ble Chief Justice of the High Court of Karnataka with the approval of the Governor of Karnataka has made the High Court of Karnataka Service (Conditions of Service and Recruitment) Rules, 1973 and it is these rules that govern appointments and promotions of employees on the

establishment of the 1st respondent. Rule-7 prescribes that recruitment to a post or class of posts shall be made as enumerated in Schedule III to the Rules. Item 6 of Schedule III lays down the method of recruitment for the post of Assistant Registrars and the said method of recruitment reads as under:

"By promotion on the basis of seniority - cum- efficiency from the cadres of Section Officers, Courts Officers and Senior Judgment Writers. Out of the total number of posts of Assistant Registrar, 1/5th posts shall be reserved for being filled up from the cadre of Senior Judgment Writers. However, initially the existing and future vacancies shall be filled up in the ratio 2:2:1 from the cadres of Section Officers, Court Officers and Senior Judgment Writers respectively, till the quota reserved for Senior Judgment Writers is realized and thereafter whenever a post held by an incumbent coming from the cadre of Senior Judgment Writers falls vacant, such vacancy shall be filled up only from the cadre of Senior Judgment Writers. The other vacancies shall be filled up from the cadres of Section Officers and Court Officers by rotation."

3. The petitioners and respondents 2 and 3 at the relevant time were working as Court Officers and the establishment of the 1st respondent. Both the petitioners joined service as stenographers and thereafter they were promoted as Judgment Writers and then as Court Officers. As per the Civil List published by the department of Personnel and Administrative Reforms, the following was the relative seniority of the petitioners and respondents 2 and 3:

										SI.
Sl. No. in Date of entry into No. the Name cadre of Court Seniority Officer list										
										1 13
C. Channe Gowda	5.10.1990	2	14	K.V. Saraswathi	11.10.1990	3	15			
Narasareddy	14.11.1990	4	17	V. Vijaya Prabhakar	09.06.1993					

4. Thus the petitioners are seniors to respondents 2 and 3. Six posts of Assistant Registrars became vacant and these posts were required to be filled by promotion from the cadres of Senior Judgment Writers, Court Officers and Section Officers as per the ratio prescribed in the rules. Two out of six vacancies were to be filled by promotion from the cadre of Court Officers. The petitioners are senior most in the cadre of Court Officers and they do not have any adverse remarks in the Annual Confidential Reports. What was required under the rule was consideration of the cases of Court Officers for promotion strictly in accordance with seniority and promote them in accordance with their seniority subject only to the condition that there are no adverse remarks in the last 3 annual Confidential Reports of the concerned Court Officers. Instead of following the rule, which is being consistently followed in respect of every other cadre required to be filled up by promotion on the basis of seniority-cum-efficiency, the 1st respondent by a memo dated 28.8.2003, copy of which is produced as Annexure A, called 10 Senior Judgment Writers, 8 Court Officers and 5 Section Officers for interview before the Hon"ble Chief Justice. Pursuant to the said

memo, the petitioners as also the respondents 2 and 3 appeared before the Hon"ble Chief Justice for interview on 2.9.2003. The memo neither stated the number of posts for which the promotions were being considered, nor it stated any rule under which interview was being conducted. However, having regard to the implicit obedience that is expected of the employees in the Judiciary, the petitioners had no choice but to appear for the interview and they appeared for the interview accordingly. Thereafter by a notification dated 2nd September 2003, actually issued on 5.9.2003, original of which is produced as Annexure-B, it has been notified that the Hon"ble Chief Justice is pleased to select and promote temporarily the following officers of this Office as Assistant Registrars (Group-A) in the grade of Rs. 7,400-200-8800-260-10,880-320-13,120 with immediate effect. By the said notification, the respondents 2 and 3 are promoted against the quota reserved for Court Officers and the petitioners who are seniors to them have been denied promotion. On noticing that the petitioners have been denied promotion and their juniors have been promoted, the petitioners made a representation dated 8.3.2003, copy of which is produced as Annexure-C, which is yet to be replied. The Annual Confidential Reports of the petitioners are definitely better or equal to that of the respondents 2 and 3 and therefore the petitioners who are seniors are entitled to be preferred for promotion. Wherever a post is required to be filled by selection, Schedule III to the Rules clearly states so, as could be seen from the posts of Registrar (Administration) and Deputy Registrars. In respect of these posts, the method of recruitment clearly states "by promotion by selection". In respect of lower posts such as Assistant Registrars, Court Officers, Senior Assistants, Assistant Court Officers etc., schedule III prescribes the method of recruitment as by promotion on the basis of seniority-cum-efficiency. At all points of time, in respect of every cadre, for which the method of recruitment is promotion on the basis of seniority-cum-efficiency, promotion has strictly been made in accordance with the seniority subject to the absence of adverse remarks in the immediate 3 preceding annual confidential reports. There is no question of applying the norm of selection to these posts as is clear from the language of the rule and this has been correctly understood and followed by the 1st respondent all along. At no point of time, any adverse remark has been communicated to the petitioners and they have maintained a blemishless service record. On these and other averments made in the Writ Petitions, the petitioners have prayed for the following reliefs:

a) Quash notification bearing No. HCE 1/2001 dated 2nd/5th September, 2003 (under Annexure-B to the Writ Petitions) in so far as it pertains to respondents 2 and 3 by issue of a writ in the nature of certiorari or such other appropriate writ, order or direction and direct the 1st respondent by issue of a writ in the nature of mandamus to promote the petitioners as Assistant Registrars with effect from 2nd September 2003 and grant all consequential benefits, including the arrears of salary, allowances and seniority in the interest of justice and equity.

(1) Issue such other appropriate writ, order or direction as the Hon"ble Court deems fit to grant in the interest of justice and equity, including the award of

costs of this Writ Petition ."

5. In the statement of objections filed on behalf of the Respondent No. 1, it is contended inter alia as under:

Respondents 2 and 3 joined the service as Second Division Clerks on 29.3.1967 and 31.5.1971 respectively, whereas the 1st petitioner Sri C. Channegowda entered into service as stenographer on 24.1.1981 and the 2nd petitioner Smt. K.V Saraswathi entered into service on 5.7.1961 as second grade typist and both of them were promoted as Court Officers on 12.4.1990. The contention of the petitioners that they are the senior most in the cadre of Court Officers is not correct and on the other hand one Sri Devaraj, Court Officer, is the senior-most candidate among the list of candidates who were called for interview as per Annexure-A to the Writ Petition and he has not been promoted as Assistant Registrar. The 2nd and 3rd respondents have been considered and promoted as Assistant Registrars purely on the basis of seniority-cum-efficiency. While effecting promotion to a responsible post like Assistant Registrar, the competent authority is giving more attention not only to the seniority, but also to the efficiency. As provided under Rule 7 & Schedule III at Serial No. 6 of the said rules, the method of recruitment for the post of Assistant Registrar is ordered on the basis of the seniority-cum-efficiency. The respondents 2 and 3 have been promoted as Assistant Registrars on this ground alone. The confidential reports of the officers are confidential in nature and they cannot be accessible to others unless permitted by the competent authority. Regarding the representation dated 8.9.2003 of the petitioners, it is stated that while pending consideration of the representation, the petitioners have filed the Writ Petitions. The promotion of the respondents 2 and 3 were effected on the basis of the seniority-cum- efficiency and overall performance of the respondents. Hence, it is as per the method of recruitment for the post of Assistant Registrar envisaged in the High Court of Karnataka (Conditions of Services and Recruitment) Rules 1973. The promotion has been effected purely on the basis of seniority-cum-efficiency & overall performance of the respondents herein. There are no adverse remarks in the Confidential Reports of the respondents 2 and 3. The promotion of the respondents have been effected as per the method of recruitment under the relevant rules and the promotions have been done purely on the basis of the seniority-cum-efficiency basis. Under the circumstances, it is prayed that the Writ Petition filed by the petitioners may be dismissed.

6. In the statement of objections filed by the 2nd respondent, it is contended as under:

The 2nd respondent joined the services of the High Court as SDA on 29.3.1967. He was promoted as a 1st Division Assistant on 16.7.1974. Subsequently, in the year 1989, he was promoted as a Senior Assistant. On 14.11.1990 he was promoted as Court Officer and ever since then, he has been discharging his duties as a Court Officer in a most efficient manner. He has in fact rendered 37 years of service as an employee of the High Court and has worked for many

more years than the petitioners. Thus he has a larger and greater experience than the petitioners. He has to retire in the month of April-2004 while the petitioners have several years of service left. No seniority list as such has been prepared and maintained and it cannot therefore be contended that the petitioners are seniors to the respondent No. 2.- The seniority in respect of a particular post will be reckoned only if the rules specifically state that the seniority would be reckoned for the purpose of future promotion. As regards the post of Court Officers, the seniority; in other words the length of service as a Court Officer does not play any important or significant role since the discharge of duties as a Court Officer is solely on the basis of the efficiency and it is for this specific reason, no seniority list is maintained/In other words in the cadre of Court Officers, the principal requirement is one of efficiency. This respondent alongwith the petitioners was directed to appear for an interview before the Hon''ble Chief Justice on 1.9.2003 for being considered to the posts of Assistant Registrars. In compliance with the said direction, the respondent No. 2 appeared before the Hon''ble Chief Justice and faced the interview. He performed well in the interview. Subsequently, a notification dated 2.9.2003 came to be issued by which he was promoted as an Assistant Registrar. The promotion of the 2nd respondent to the post of Assistant Registrar was made by the Hon''ble Chief Justice on consideration of the annual confidential reports, the assessment of the efficiency of the 2nd respondent and his performance in the interview conducted by the Hon''ble Chief Justice. He was found fit and suitable for promotion to the post of Assistant Registrar and this determination of the Hon''ble Chief Justice on the basis of the annual confidential reports, seniority and efficiency cannot be disputed by the petitioners. The Hon''ble Chief Justice being endowed with the powers to assess the efficiency of his subordinate officials, has the sole and exclusive prerogative to select suitable candidates for promotion on the basis of their efficiency. The Hon''ble Chief Justice under the statutory rules has been empowered to assess the efficiency of candidates in any manner that he deems fit. The Hon''ble Chief Justice has probably assessed the efficiency of all the eligible candidates and has come to the conclusion that this respondent and others were more suitable for promotion than the petitioners by taking into consideration all factors including the most important factor of efficiency. The assessment of the efficiency of the candidates by the Hon''ble Chief Justice cannot be questioned by the petitioners and the same is beyond the scope of judicial review. The promotion to the cadre of Assistant Registrar is not on the basis of seniority cum merit as is being contended by the petitioners. A reading of the rules will clearly indicate that the promotion to the post of Assistant Registrar is on the basis of Seniority-cum-efficiency. In other words, there is a marked difference in promoting a candidate on the basis of seniority-cum-merit as opposed to promoting a candidate on the basis of seniority-cum efficiency. In the case of promoting a candidate on the basis of seniority-cum-efficiency, the overriding concern of the rule making authority is to promote the candidate, who is the most efficient to discharge the duties prescribed to the post and not seniority or even for that purpose merit. The paramount requirement of a Court

official while discharging his duties as a Court official is to be extremely efficient. The efficiency of an official can be assessed or gauged only by the Hon''ble Chief Justice and by no other person. In order to be considered for promotion, seniority is not at all the criterion and it is only the efficiency which is the criterion under the rules. Therefore the promotion of the 2nd respondent by the Hon''ble Chief Justice on the ground that he is more efficient than the petitioners is just and proper and does not suffer from any infirmity, which calls for interference. That further, a complete reading of the Rules would lead to the conclusion that the Hon''ble Chief Justice has been conferred with the powers not only to make appointments but also to amend the rules and to prescribe the qualifications. The rules also stipulate that the Rules prescribed to govern the conduct of the employees do not in any manner limit or affect the powers of the Hon''ble Chief Justice and in fact, the Hon''ble Chief Justice has been empowered to make such order as he deems fit in regard to all matters provided in the rules or in respect of matters, which have not been specifically provided for or have not been sufficiently provided for. The powers of the Hon''ble Chief Justice is an all encompassing power which cannot be limited or abridged by the Rules thereby leading to the clear conclusion that it is the sole and exclusive prerogative of the Hon''ble Chief Justice to determine the conditions of service and recruitment of all Court employees. Viewed from this background, the promotion of the 2nd respondent by the Hon''ble Chief Justice cannot be impugned on the ground that the alleged seniority of the petitioners have been overlooked. The only right of a candidate in the case of promotion is that his case should be considered for promotion. In the instant case, all the eligible candidates including the petitioners and the respondents cases were considered and the Hon''ble Chief Justice on a subjective evaluation and assessment of various factors has come to the conclusion that the 2nd respondent and other respondents were found more suitable for promotion and this subjective satisfaction of the Hon''ble Chief Justice cannot be impugned by the petitioners. That further, since the promotion to the post of Assistant Registrar is on the basis of an over all performance of the eligible candidates over a period of time and since this performance over a period of time is to be made only by the Hon''ble Chief Justice, the petitioners cannot be permitted to contend that they ought to have been promoted solely on the ground that they are allegedly senior to the 2nd respondent herein. Under the circumstances, it is prayed that the Writ Petition filed by the petitioners may be dismissed.

7. The respondent No. 3 in his statement of objections has contended as under:

The seniority list published by the D.P.A.R. (Services) is applicable to the High Court of Karnataka and it cannot be taken as the ground for seniority of the petitioners. When the petitioners were promoted as stenographers, the respondents were promoted as First Division Assistants and were seniors to them. When the petitioners were promoted as Court Officers, there was an agitation by the law graduates, who were working as FDAs on the establishment of the High Court of Karnataka. Thereafter, the promotion of Court Officer was

made on the basis of seniority-cum-efficiency from the cadre of ACO/Senior Assistants. Who are law graduates and the seniority being reckoned on the basis of the length of service in the cadre. The 3rd respondent was promoted as Assistant Court Officer in August 1991. Though the 3rd respondent had the required qualification to be promoted as Court Officer, he was not given the promotion when it became due. Later on, the 3rd respondent was promoted as Court Officer on 10-6-1993. The Hon''ble Chief Justice had interviewed all the 8 eligible Court Officers for two posts of Assistant Registrars and on consideration of their performance in the interview, the annual confidential report, seniority, age, efficiency and on overall consideration of all these factors, they were found as fit and suitable for promotion to the post of Assistant Registrars. Therefore, the respondent No. 3 is promoted as Assistant Registrar. Rule 7 clearly states that the recruitment to the post or class of post shall be made by the Hon''ble Chief Justice as enumerated in Schedule III of the said rules. Rule 10 provides that the Hon''ble Chief Justice may at the time of passing of an order appointing two or more persons simultaneously to the service fixing an order of preference among them and where such an order of preference has been fixed, the seniority shall be determined in accordance with the order. Rule 20 of the High of Karnataka Service (Conditions of Service and Recruitment) Rules, 1973 describes the powers of the Hon''ble Chief Justice and Rule 23 of the said rules provides residuary powers to the Hon''ble Chief Justice. It is true that Schedule HI of the High Court of Karnataka Service (Conditions of Service and Recruitment) Rules, 1973 clearly prescribes the method of recruitment to the post of Deputy Registrar and for the post of Assistant Registrar. The promotion made by the Hon''ble Chief Justice is on the basis of seniority-cum-efficiency, age and on overall merit. Furthermore there were no adverse remarks in his annual confidential reports in his entire service. The selection of the 3rd respondent is made in accordance with law as per rules based on seniority, efficiency and taking into consideration all the annual confidential reports, age etc., Therefore the selection of the 3rd respondent for promotion to the post of Assistant Registrar cannot be found fault with. The respondents 2 and 3 having served for 36 and 32 years respectively are the senior most officers than the petitioners who entered the establishment of the High Court of Karnataka much earlier to petitioners 1 and 2. The second respondent is having six months of service and the third respondent is having 15 months of service. Therefore the promotion made is in accordance with the rules and Rule 20 of the Rules and well within the ambit of the power and jurisdiction of the Hon''ble Chief Justice. The promotion of the 3rd respondent is made at the fag end of his service having regard to entry into the service and periodical promotions and the injustice caused to him in giving promotion as Court Officer. Though he was eligible to be promoted at the time when he acquired the required qualification to be promoted as Court Officer, the promotion was not given. Now by considering all these aspects, the promotion as Assistant Registrar is given as per the notification vide Annexure-B which cannot be quashed as the same is in accordance with law.

8. In the additional statement of objections filed by the 3rd respondent, he has further contended as under:

Rule 20 of the High Court of Karnataka Service (Conditions of Service and recruitment) Rules, 1973 provides power to the Hon'ble Chief Justice to make the selection of the Court Officers, Judgment Writers and Section Officers to the post of Assistant Registrar on the basis of seniority-cum-efficiency. The respondents 2 and 3 were selected for the promotion to the post of Assistant Registrar as per Annexure-B under Rule 7 of the Rules. In pursuance of Annexures A and B and Rule 7 of the Rules, the post of Assistant Registrar is not made of seniority alone and it involves comparative assessment of the officers appeared at the interview. The relevant consideration has been taken note of and irrelevant aspects have been eschewed from consideration. The administrative decision has a nexus to the facts on record and the same cannot be attached on merits. The order of the High Court promoting the respondents 2 and 3 cannot be questioned as the process of selection is in accordance with the relevant considerations that are seniority, age, efficiency, date of entry into service, annual confidential reports etc., in accordance with Rules. Since the post of Assistant Registrar is a selection post, the appointment or the selection cannot be made on the basis of seniority alone. Therefore the promotion of respondents 2 and 3 is in accordance with law. That the criteria for considering the promotion was over all assessment of seniority, date of entering into the service, age, efficiency, confidential reports etc., It is the prerogative of the High Court to specify area and parameter of weightage to be given in respect of merit and seniority. It is for the employer to stipulate the criteria for promotion and it is permissible for the employer to have their own criteria for adjudging the claims on the principle of seniority-cum-merit giving primacy to merit as well. The selection of the respondents 2 and 3 cannot be said to be discriminatory and arbitrary. The petitioners cannot claim as a matter of right by virtue of seniority alone if they are found unfit to discharge the duties of the higher post. When the post of Assistant Registrar is a "selection post", it is required to be filled up on merit-cum-seniority. Promotion has to be made on the basis of inter se merit of the eligible candidates. Therefore the selection of the respondents 2 and 3 cannot be found fault with. The petitioners have made untenable allegation against this respondent contending that the service record of this respondent is far from being blemishless as there is an adverse entry in the service record as not satisfactory. It, is also alleged that the disciplinary proceeding were initiated and was not found guilty on the grounds of insufficiency of evidence. It is stated that even if there are any disciplinary proceedings initiated and found not guilty in the enquiry, that has no bearing for consideration of the promotion. Therefore even assuming that there was an enquiry against the respondent No. 3, which has been ended in his favour, that cannot have a bearing on the selection for the promotion. The petitioners have no locus standi to challenge Annexure-B, the notification of selection and promotion of the respondents 2 and 3 as they have not challenged the memo dated 28.8.2003 calling upon the eligible candidates

for an interview for filling up the posts of Assistant Registrars. The petitioners are estopped from challenging the selection of the respondents 2 and 3 as Assistant Registrars by operation of doctrine of estoppel by conduct. The petitioners having appeared before the interview, now cannot challenge the selection and the promotion as the decision in the interview is unpalatable. The petitioners appeared before the interview without protest. Hence they cannot challenge the validity of the selection and the mode of selection as they are unsuccessful. Under the circumstances, it is prayed that the Writ Petition filed by the petitioner may be dismissed.

9. Learned Counsel for the petitioners has contended before us as under:

Seniority-cum-efficiency is no more than seniority-cum-merit and it means that given the minimum necessary merit requisite for efficiency of administration, the senior though less meritorious shall have priority. Seniority-cum-merit in the matter of promotion postulates that given the minimum necessary merit requisite for the efficiency of administration, the senior even though less meritorious, shall have priority and a comparative assessment- of merit is not required to be made. Where the rule prescribes that subject to the requirements of efficiency promotion shall ordinarily be made according to seniority, but the norm to be followed is seniority cum merit. In the case of promotion by seniority-cum-fitness, every civil servant is entitled to the consideration of his case for promotion according to his seniority, either in the provisional seniority list or final seniority list, as the case may be and the promoting authority has to consider the cases of all eligible officers who come within the zone of consideration strictly according to the seniority. If the senior most official due for promotion is found fit for promotion, he has to be promoted and there is no question of comparing his merit with those of his juniors in terms of relative merit. In other words, unless the senior official is found unfit for promotion either on account of adverse service record or does not satisfy other conditions or qualifications prescribed under the rules, he has a right to be promoted. It is only after reaching the conclusion that the senior most official is unfit for promotion, the promoting authority could proceed to consider the case of the next senior and so on, on each occasion for promotion. Promotion of respondents 2 and 3 in preference to the petitioners having regard to the fact that they are juniors of the petitioners is clearly contrary to the settled principles of law, contrary to the principle of seniority-cum-merit which is required to be followed and which has in fact been followed all along, arbitrary, discriminatory, suffers from non-application of mind to the requirement of the rule and proceeds on the premise that the post of Assistant Registrar is required to be filled up by selection, totally ignoring the mandate of the rule, in particular it is also contrary to proviso to Rule 20 which reads: "provided that where any rule is applicable to the case of a Court servant, his case shall not be dealt with in a manner less favourable to him than that provided by the said rule, unfair, unjust, unreasonable and contrary to and violative of Articles 14 and 16 of the Constitution. By the memo at Annexure-A, 10 Senior Judgment Writers, 8 Court Officers and 6 Section Officers were called

for interview scheduled to be held on 1.9.2003 at about 4.00 P.M but the said interview was infact held on 2.9.2003. The petitioners herein had appeared for the interview before the Hon''ble Chief Justice on 2.9.2003 in accordance with the memo issued by the 1st respondent at Annexure-A. On the same day, the notification at Annexure-B came to be issued promoting the respondents 2 and 3 and thereby the claim of the two petitioners herein came to be rejected without a proper and fair consideration of their case. Rule 7 and Schedule III at Serial No. 6 of the said rules, which govern appointments and promotions of employees on the establishment of the 1st respondent, does not prescribe any interview to be held by the Hon''ble Chief Justice for promoting to the post of Assistant Registrar. What was required under the rule was consideration of the cases of Court Officers for promotions strictly in accordance with seniority and promote them in accordance with their seniority subject only to the condition that there are no adverse remarks in the last three annual confidential reports of the concerned Court Officers. Instead of following the rule, which is being consistently followed in respect of every other cadre required to be filled up by promotion on the basis of seniority-cum-efficiency, the 1st respondent by a memo dated 28.8.2003 as per Annexure-A called the petitioners for interview before the Hon''ble Chief Justice. That the petitioners herein who are admittedly seniors to the respondents 2 and 3 in the cadre of Court Officers do not have any adverse remarks in the annual confidential reports. Though the rules does not prescribe any interview being held by the Hon''ble Chief Justice, the petitioners having regard to the implicit obedience that is expected of by them in the judiciary, had no choice but to appear for the interview and they appeared for the interview accordingly. Merely because the petitioners had appeared for the interview, that by itself cannot have the effect of legalising the proceeding held in respect of the promotion of respondents 2 and 3, if the same is opposed to law. It is stated that the interview has been held in accordance with Rule 3 of the Karnataka Civil Services (General recruitment) Rules 1977, whereas the 1st respondent itself in its statement of objections has stated that the Karnataka Civil Services (General recruitment) Rules 1977 is not applicable to the High Court as the Hon''ble Chief Justice in exercise of the powers conferred by Articles 229(1) and (2) of the Constitution framed the rules as the High Court of Karnataka Service conditions of service and recruitment) Rules, 1973. That being so, when the relevant rule does not prescribe holding of any such interview, the promotions effected on the basis of alleged assessment made at the time of the interview is in clear violation of the rules. Rule 20 appearing in Part III prescribes that nothing in the Rules in this part shall be construed to limit or abridge the power of the Chief Justice to deal with the Case of any Court servant in such manner as may appear to him to be just and reasonable provided that where any Rule is applicable to the case of a Court servant, his case shall not be dealt with in a manner less favorable to him than that provided by the said Rule. The said Rule 20 is applicable only to Part III of the Rules and not to part II wherein the method of recruitment is prescribed as per Rule 7 and hence, the Hon''ble Chief Justice has no power to deviate from the method of recruitment envisaged under Rule 7 appearing in

part II of the High Court of Karnataka Service (Conditions of Service and Recruitment) Rules 1973. That apart, wherever element of selection is there, Schedule III prescribes selection but item No. 6 of Schedule III read with Rule 7 would indicate that the word, "selection" is not found and what is found therein is promotion on the basis of seniority-cum-efficiency and hence, the post of Assistant Registrar is a non-selection post subject to rejection of non suitable candidates or de-merited candidates. That in the Statement of Objections filed by the 1st respondent vide para 9, it is stated that that the Karnataka Civil Service (General Recruitment) Rules, 1977 is not applicable to the High Court. In the face of such statement made by the 1st respondent, Rule 4(2) of Karnataka Civil Service (General Recruitment) Rules, 1977, which deals with power of appointment etc., are rightly stated to be not applicable and that being so, in the absence of the relevant Rule prescribing an interview as a mode or method of promotion, the 1st respondent was not justified in holding an interview to assess the efficiency of the eligible candidates. In the process of promotion, the primary consideration has not been given to the seniority but appears to have given only to efficiency on the basis of the interview. When calling for interview itself is in contravention of the Rules, the 1st respondent could not have taken that as a criteria to promote respondents 2 and 3. That apart, the interview was held on 2-9-2003 at about 4-00 p.m. or 4-15 p.m. and the promotion Notification had also been issued on the very same day, i.e., on 2-9-2003 itself, and that being so, when the competent authority had time to make such elaborate order. Under the circumstances, therefore, it appears that the interview that was sought to be held was only a device to promote the respondents 2 and 3 and nothing more. To sum up, first of all the 1st respondent was not required to conduct any interview as per the relevant Rule and hence, the process of promotion is clearly in violation of Rule 7 of item No. 6 of Schedule III. Even if such interview is held, it appears to have been held only to throw out the persons whom the selecting authority did not want to promote.

10. In support of his submissions, the learned Counsel for the petitioner has placed reliance upon the following decisions:

1. B.V. Sivaiah and Others etc. Vs. K. Addankl Babu and Others etc., .
2. Union of India and Others Vs. Lt. Gen. Rajendra Singh Kadyan and Another,
3. B. VIRUPAKSHAPPA V. STATE OF KARNATAKA AND ANR., ILR 1979 KAR PAGE 92, Para 14
4. Dr. A. Narayana Rao Vs. State of Karnataka,
5. The State of Maharashtra and Others Vs. Pratap Singh Dayal Singh Rajput,
6. Umesh Chandra Shukla Vs. Union of India (UOI) and Others,
7. S.V. Narayana and Others Vs. The Kolar Gramin Bank and Others,
8. Maharashtra State Road Transport Corporation and Others Vs. Rajendra

Bhimrao Mandve and Others,

9. H. C. PUTTASWAMY AND ORS. V. THE HON"BLE CHIEF JUSTICE OF KARNATAKA HIGH COURT, BANGALORE AND ORS. 1991 SU(2) SCC 421 Paras 9, 10 & 11.

11. While placing reliance upon these decisions, the learned Counsel for the petitioners has contended that holding of an interview of the eligible candidates before promoting to the post of Assistant Registrar, which is based on seniority-cum-efficiency, is not contemplated under the relevant Rule, namely, Rule 7 and Schedule III item No. 6, nor it was made known to the petitioners herein at any time and hence, the said criteria adopted by the 1st respondent in the process of promotion was wholly improper and incorrect. He further contended that unless the 1st respondent has found the petitioners herein to be unfit for promotion, their legitimate claim for promotion could not have been ignored. Under the circumstances, therefore, the promotion of respondents 3 and 4 ignoring the legitimate claim of the petitioners herein is violative of Articles 14 and 16 of the Constitution.

12. Learned Government Advocate for the 1st respondent has contended as under:

The petitioners herein, being aggrieved by the Notification dated 2-9-2003 issued by the 1st respondent in so far as it relates to promotion of respondents 2 and 3 as Assistant Registrars in preference to and ignoring the seniority of the petitioners, have challenged the Notification dated 2-9-2003, vide Annexure-B. In reply, the 1st respondent has filed statement of objections and stated therein that the respondents joined the service as Stenographers is not correct and on the other hand, they joined service as Second Division Clerks on 29-3-1967 and 31-5-1971 respectively, whereas, the 1st petitioner entered into service as Stenographer on 24-1-1981 and the 2nd petitioner entered into service on 5-7-1961 as Second Grade Typist and both of them were promoted as Court Officers on 12-4-1990. Further, the respondent No. 1 has stated that by virtue of the powers conferred under Article 229(1) & (2) of the Constitution of India, the Hon"ble Chief Justice with the approval of Governor of Karnataka has made the High Court of Karnataka Service (Conditions of Service and Recruitment) Rules 1973. Rule 7 of the said Rule's provides that the promotion to the cadre of Assistant Registrar shall be purely on the basis of seniority-cum-efficiency as provided under Rule 7, Schedule III at serial No. 6 of the said Rules. The 1st respondent exercising the powers conferred under the said Rule, has issued the said Notification dated 2-9-2003 vide Annexure-B. The Writ Petition filed by the petitioners is not maintainable either in law or on facts, firstly, in view of the fact that they have not challenged the Rules and having not challenged the Rules, the petitioners have no right to challenge the promotion made as per Rule 7 Schedule III of the Rules and secondly, the petitioners having appeared for the interview for promotion to the post of Assistant Registrar, they are prohibited from challenging the Notification dated 2-9-2003. Further more, it is a well

settled principle that promotion is not a matter of right. That apart, the petitioners could have agitated the rights, had the 1st respondent failed to consider the case of the petitioners for promotion to the post of Assistant Registrar. The 1st respondent has considered the case of both the petitioners for promotion and has not selected them for the said post. The petitioners have not attributed any malafides against the authorities. The measurement of efficiency is subjective in nature and the same having done by a highest authority on the administrative side, it cannot be questioned by the petitioners. Further, Rule 7 and Schedule III of the 1973 Rules, provides that the promotion to the post of Assistant Registrar shall be made on the basis of seniority cum-efficiency from the cadres of Section Officers, Court Officers and Senior Judgment Writers and the 1st respondent has clearly followed the guidelines laid down under the aforesaid provisions and hence, the promotion made vide Notification dated 2-9-2003 as per Annexure-B is valid, proper and lawful. That further, the petitioners have not attributed, any malafides against the authority, nor they have challenged the relevant rules. The petitioners having not challenged the rules framed in exercise of the powers conferred by Article 229 of the Constitution, the action taken by the selecting authority within the framework of the relevant rules, cannot be questioned. The petitioners admit that the promotion to the post of the Assistant Registrar as per the relevant rules is seniority-cum-efficiency and as per Annexure-A, 24 officers from different cadres were called for interview and among them, 8 were Court Officers including the petitioners herein. The petitioners having appeared for the interview and the authority having considered the efficiency of all such candidates who appeared for the interview, has promoted the respondents 2 and 3 from the cadre of the Court Officers. That being so, the petitioners have no right to question the discretion of the Hon''ble Chief Justice in promoting the respondents 2 and 3 from among the persons who appeared for the interview. When the promotion is on the basis of seniority-cum-efficiency, the efficiency has to be given more preference and that is exactly what has been done by the Hon''ble Chief Justice in promoting the respondents 2 and 3 from the cadre of the Court Officers and hence it cannot be questioned by the petitioners when their cases have also been considered and found to be not fit. Merely because the petitioners herein happened to be the seniors to respondents 2 and 3, they are not entitled for promotion as of right and they have to satisfy the test of efficiency. The complaint of the petitioners that they being seniors, they ought to have been promoted has absolutely no basis in view of the fact that the promotion to the post of Assistant Registrar is based on seniority-cum-efficiency. That in the instant case, the Hon''ble Chief Justice interviewed all the eight eligible Court Officers for the two posts of Assistant Registrars and on considering their performance in the interview, annual confidential reports, seniority, age, efficiency and on an overall consideration found the respondents 2 and 3 to be fit and suitable for promotion to the post of Assistant Registrar and accordingly, they have been promoted as Assistant Registrars and this being the criteria adopted by the Hon''ble Chief Justice, the complaint of the petitioners is fully

misconceived and it cannot be sustained in law. The very fact that the petitioners were also called for interview and they were interviewed by the Hon''ble Chief Justice would show that the case of the petitioners was considered and they were found unsuitable for promotion to the post of Assistant Registrar and on the other hand the respondents 2 and 3 who were found suitable to the said post have been promoted. There is absolutely no violation of any rule and the grievance of the petitioners is wholly unfounded more so when they had also appeared for the interview before the Hon''ble Chief Justice and were not promoted.

13. In support of his submissions, the learned Government Advocate for the 1st respondent has relied upon the following decisions:

1.1993(2) UJSC 188 (relevant paragraphs 5 and 6) 1993(2) UJSC 188 (relevant paragraphs 5 and 6)

2.P.U. JOSHI V. ACCOUNTANT GENERAL AHMEDABAD 2003 SCW 272

3. Dwarka Prasad and Others Vs. Union of India (UOI) and Others,

4. VED PRAKASH V. STATE OF HARYANA

5. The Central Council for Research in Ayurveda and Siddha and Another Vs. Dr. K. Santhakumari,

6. Union of India and Another Vs. Ashutosh Kumar Srivastava and Another,

7. K. SAMANTARAY V. NATIONAL INSURANCE COMPANY LIMITED, AIR 2003 SC 4423

14. Learned Counsel for the respondent No. 2 has contended as under:

The central point for consideration is whether the petitioners herein have made out any case for judicial review under Articles 226 and 227 of the Constitution and if they have not made out any case for judicial review of the promotions effected by the Hon''ble Chief Justice, then the Writ Petition is not maintainable. While considering this aspect of the matter, the conduct of the petitioners must also be taken into consideration and if it is so considered, that would clearly disentitle the petitioners from seeking any relief from the Court. Annexure-A to the Writ Petition clearly specified that there shall be an interview for filling up the posts of Assistant Registrars in the establishment of the 1st respondent and the petitioners were therefore aware of and were made known about the process of interview to be held in the matter of promotion. Thus they were made aware of the fact that the interview is one of the criteria for considering their promotion to the posts of Assistant Registrars. If the petitioners were of the view that the holding of interview is contrary to the relevant rules, they should not have appeared for the interview and on the other hand they should have challenged the same or at any rate appeared for the interview under protest. But they did not do this. Having not done any of these things and having appeared before the Hon''ble Chief Justice for the interview and they being not selected, they cannot

now turn round and say that the Hon"ble Chief Justice should not have held the interview as one of the modes for the process of promotion. Therefore their contention that there is violation of the rule by the Hon"ble Chief Justice cannot be sustained on the basis of the principles of estoppel as well as on account of the conduct of the petitioners. Even on the basis of seniority also, the petitioners have no case for being considered. Admittedly, no seniority list was published in the cadre of Court Officers and in the absence of any such seniority list, the contention of the petitioners that they were seniors to respondents 2 and 3 in the cadre of Court Officers cannot be countenanced. That apart, holding of an interview is an aid to the relevant rule and not in derogation of the rule for testing the efficiency of the eligible candidates for the purpose of promotion to a higher post. Efficiency of an officer can be assessed by several methods and one of the methods is holding an interview and hence holding of an interview by the Hon"ble Chief Justice in the matter of promotion process cannot be said to be in violation of the relevant rule and moreover even the petitioners herein did participate in the interview and they were not selected obviously because they did not do well in the interview. The entire Writ Petition is based on a wrong foundation inasmuch as the petitioners have approached this Court under the premise that since they are seniors to respondents 2 and 3, they should have been promoted to the post of Assistant Registrar, forgetting for a moment that the promotion to the post of Assistant Registrar is based on seniority-cum-efficiency and not on the basis of seniority alone. All the averments, made in the Writ Petition as well as the grievance of the petitioners appear to be that since they were seniors to respondents 2 and 3 in the cadre of Court Officers, they should have been promoted whereas the relevant rules clearly prescribe that the basis of promotion is seniority-cum-efficiency. The relevant rule does not say that only the remarks in the Annual Confidential Reports for the past three years are to be considered and nothing else. The contention of the petitioners is two fold, one is that they are seniors and the other is their Annual Confidential Reports do not disclose anything adverse and hence the denial of their promotions is contrary to the rule. The contention of the petitioners that the Annual Confidential Reports for three preceding years should be a basis for promotion, has absolutely no relevance. That apart, the complaint now made in the petition is purely an after thought. The representation that was made by the petitioners herein was based on certain criterion whereas the Writ Petition filed by them is founded on an altogether a different criterion which clearly indicates that the grievance now put forth by the petitioners is clearly an after thought. This would also reflect upon the conduct of the petitioners. That in the instant case, the interview was held and the efficiency of all the eligible candidates including the petitioners was tested not only on the basis of their performance in the interview but also in other aspects and it was found that they are not fit for promotion to the post of Assistant Registrar in the establishment of the 1st respondent. There is a settled distinction between seniority-cum-merit and seniority-cum -efficiency and they are not synonyms. Efficiency is on a higher plane than the merit. The expression, "efficiency" gives a wider discretion to the selection authority who

knows what are the duties attached to the post and the selecting authority has a discretion to choose right person for a right post. The petitioners have not made out any case of arbitrary exercise of discretion by the selecting authority in the matter of promotions. That being so, the order impugned in the Writ Petition is beyond the scope of judicial review. In fact even the respondents 2 and 3 have been promoted temporarily to test their efficiency and if they do not fair well, they may not be confirmed to the post. In so far as the respondent No. 2 is concerned, he had attended the interview, promoted to the post of the Assistant Registrar, served in the capacity of the Assistant Registrar and on attaining the age of superannuation, he has retired in the said post. To sum up, there has been no violation of any rules in the process of promotion and even the petitioners herein had participated in the interview and their cases were also considered by the selecting authority and they having not found fit for promotion, they have not been promoted. Under the circumstances, therefore, they are estopped from challenging the process of promotion having participated in the interview and not being promoted.

15. In support of his submissions, the learned Counsel for the respondent No. 2 has placed reliance upon the decision of the Hon'ble Supreme Court in the case of B.V. Sivaiah and Others etc. Vs. K. Addankl Babu and Others etc., .

16. Learned Counsel for the respondent No. 3 has contended as under:

The respondent No. 3 was selected as SDA on 14.11.1967 and he was appointed as SDC on 31.5.1971. He was promoted as FDA on 10.4.1978 and taken to duty on 11.4.1978. He acquired law degree in April 1984 and qualified to be promoted as Court Officer by completing six years of service as FDA. The petitioners herein were appointed as stenographers in the year 1981. First Division Assistants & Stenographers are of the same cadre. Therefore the respondent No. 3 was senior by three years to the petitioners in the cadre of FDAs as on the date of appointment of the petitioners 1 and 2. That in the year 1989, 12 stenographers were given promotion as Court Officers without considering the seniority of the FDAs working in the same cadre. As on the date, in the year 1989, the respondent No. 3 had served as FDA for period of about 11 to 12 years. There was an agitation by the law graduates working as FDAs as the promotion was given only from amongst the cadre of Stenographers/Senior Judgment writers and the FDAs who were very much senior to the judgment writers/stenographers were not considered for promotion to the post of Court officers and in view of such agitation, the post of Assistant Court Officer was created and only the FDAs were promoted as Assistant Court Officers. Thus the respondent No. 3 was deprived of due promotion in the year 1989-90 though he was qualified to be promoted as Court Officer. He was promoted as Assistant Court Officer on 8.8.1991. The petitioners herein were appointed as stenographers in the year 1981 and within a span of about 8 to ,9 years, they were promoted as Court Officers. The respondent No. 3 had 12 years of service to his credit as FDA, acquiring law degree to his credit, qualifying himself to be promoted as Court

Officer. Thus grave injustice was caused to respondent No. 3. Instead of getting promoted as Court Officer, he was got promoted as Assistant Court Officer in the year 1991. He was eligible to be promoted as Court Officer early in the year 1989-90, but came to be promoted as Court Officer only on 10.6.1993. As per Rule 20 of High Court of Karnataka Service (Conditions of Service and Recruitment) Rules 1973, unfettered powers are conferred upon the Hon'ble Chief Justice and the residuary powers in all matters is conferred vide Rule 23. Schedule III prescribes that the method of recruitment and promotion to the post of Assistant Registrar is on the basis of seniority-cum-efficiency from the cadre of Section Officers, Court Officers and Senior Judgment Writers. The said, rule prima facie contemplates consideration of seniority plus efficiency and the efficiency contemplates test/interview which in turn provides for exercising of discretionary powers. The respondent No. 2 had only 6 months of service left as on the date of consideration for promotion and the respondent No. 3 had 15 months of service as on the date of such consideration. The respondent No. 3 is due to retire on 31.1.2005 having only five months of service left as on date. Further, having regard to the date of entry into service in the year 1971, promotion as FDA on 11.4.1978, depravation of opportunity to get promoted as Court Officer in 1989-90; the short term of service, efficiency, promotion has been given to the respondent No. 3. Rule 7 of the Rules, 1973 provides for comparative assessment of the officers appeared for interview and the administrative decision has nexus to the facts on record and the same cannot be attacked on merits. The process of selection is in accordance with relevant consideration like seniority, age, efficiency, date of entry into service, annual confidential reports, in accordance with the rules. The promotion to the post of Assistant Registrar cannot be done only on seniority. It is the prerogative of the High Court to specify the area and parameter of weightage to be given with respect to merit cum seniority. Having regard to the depravation of promotional opportunity to the respondent No. 3, efficiency in discharging his duty, considering the age, length of service, the respondent No. 3 has been promoted and the same has been done in accordance with the law. There being no lacuna or any illegality in the decision making process of the 1st respondent in denying promotion, the impugned order cannot be interfered with. The petitioners have no locus standi to challenge Annexure-B in the absence of any challenge to Annexure-A, whereunder the petitioners and respondents 2 and 3 were called for interview and the respondents 2 and 3 having fared well in the interview, they have been promoted. That apart, the petitioners have made wild allegations against the respondent No. 3 by contending that there was a disciplinary proceedings initiated against the respondent No. 3, but in the said disciplinary proceedings, the respondent No. 3, being not found guilty and the disciplinary proceedings have been dropped, they do not come in the way of considering of departmental promotion. The Writ Petitions filed by the petitioners besides being not maintainable is also premature in as much as after giving representation, they have hurriedly approached this Court, without giving sufficient time for the authority to exercise discretion and consider the representation. As such, the

Writ Petitions filed by the petitioners are premature. The respondent No. 3 was deprived of promotion though eligible having the required degree and seniority with 12 years of experience has been denied with promotion. A comparative assessment must be made in promoting the respondent No. 3. The case of the petitioners is based mainly on the basis of seniority as could be seen from the averments made in the Writ Petitions, but the relevant rule says that the basis for promotion is seniority cum efficiency and hence, the Writ Petitions filed by the petitioners are not maintainable in law.

17. In support of his submissions, the learned Counsel for the respondent No. 3 has placed reliance upon the following decisions:

1. UNION OF INDIA AND ORS. V. LT. GENERAL RAJENDRA SINGH KADYAN AND ANR. (SUPRA),
2. Om Prakash Shukla Vs. Akhilesh Kumar Shukla and Others,
3. Madan Lal and Others Vs. State of Jammu and Kashmir and Others, .
4. Chandra Prakash Tiwari and Others Vs. Shakuntala Shukla and Others, .
5. K. SAMANTARAY V. NATIONAL INSURANCE COMPANY LTD., 2003(6) Supreme Page 852.
6. Delhi Jal Board Vs. Mahinder Singh, .
7. The Central Council for Research in Ayurveda and Siddha and Another Vs. Dr. K. Santhakumari, .
8. VED PRAKASH AND ORS. V. STATE OF HARYANA AND ORS. (SUPRA).

18. By way of reply, the learned Counsel for the petitioners has further contended as under:

There was no reservation made in the order that the promotion is subject to consideration of representation of the petitioners and on the other hand, in para 6 of the statement of objections filed by the respondent No. 1, it is stated that the allegations in the representations are false. That being so, the Writ Petitions filed by the petitioners cannot be said to be premature. That apart, the representations filed by the petitioners is not in the nature of any statutory appeal so as to direct the petitioners to come before the Court after their statutory right is exhausted. There is no such legal requirement on the part of the petitioners to have waited for their representation being considered by the competent authority. In the absence of any such legal requirement, the Writ Petitions filed by the petitioners cannot be considered to be premature. In the matter of challenge to the memo at Annexure-A, the petitioners had absolutely no choice in the sense, under Annexure-A dated 28.8.2003, the interview was fixed on 1.9.2003 and the said memo was served on the petitioners on 29.8.2003 and that 30th and 31st being Court holidays and the date of interview having been fixed on 1-9-2003 and the interview being held on 2-9-2003. Under

the circumstances, the petitioners could not think of challenging the memo at Annexure-A and on the other hand, having regard to the implicit obedience that is expected of them, the petitioners had no choice but to appear for interview and accordingly, they had appeared for interview. Simply because the petitioners had attended the interview that by itself will not debar them from challenging the process of promotion if the same is not in accordance with law, the principle of estoppel does not apply as things have happened in such quick succession. That apart, where a statutory rule is violated, the rule of estoppel does not apply. That is to say, where there is glaring illegality, the principles of estoppel by conduct and acquiescence will have no relevance. Even otherwise, the interview has not been held in accordance with law and no records of the interview have been produced before the Court. That apart, when the ACR of the officer itself speaks that the officer is fit for promotion, no other test need be conducted. Under the circumstances, therefore, no interview was required to be held and even if it is held, to show that the same has been held in accordance with law, the records of interview should have been produced and when no such records have been produced, legal malice can be inferred. It is the length of service in the cadre that determines the seniority vide Rule 10 of the High Court of Karnataka Service (Conditions of Service and Recruitment) Rules, 1973. In the instant case, the date of entry into the cadre of the petitioners as Court Officers as has been given in the Writ Petition is not disputed and that being so, the petitioners were seniors to the respondents 2 and 3 in the feeder cadre of Court Officers and even the Annexure-A dealing with the initiation of promotion shows that the petitioners herein are seniors to the respondents 2 and 3. The alleged interview in the absence of any records was sham and a device to throw out the petitioners, whom the selecting authority did not want to promote. That apart, application of age etc., as criteria for promotion is quite contrary to the fitment already recorded in the ACR of the officers and such criteria having weighed with the selecting authority at the time of promotion, the decision taken by the selecting authority is contrary to the rule. When certain extraneous considerations have crept into the process of promotion, it is a case for judicial review. The petitioners can be superceded only when they are found unfit in view of the fact that the basis of promotion is seniority-cum-efficiency. When the statutory provisions governs the field in the sense that the terms and conditions for promotion are governed by a specific rule, the selecting authority cannot take into consideration certain other criteria to promote a person. The decisions relied upon by the learned -Counsel for the respondents have no application to the facts and circumstances of this case.

19. Further, in support of his submissions made in the reply arguments, the learned Counsel for the petitioners has relied upon the following decisions:

1. MOHAN LAL AGRAWAL AND ORS. V. BHUBANESWARI PRASAD MISHRA AND ORS. 2002(1) LU 463.
2. Raj Kumar and Others Vs. Shakti Raj and Others, .

3. P.R. Deshpande Vs. Maruti Balaram Haibatti, .
4. S.V. Narayana and Others Vs. The Kolar Gramin Bank and Others, .
5. The Workmen and Others Vs. Hindustan Lever Ltd.,
6. A.C. Jose Vs. Sivan Pillai and Others, .
7. S.G. Jaisinghani Vs. Union of India (UOI) and Others, .
8. Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, .

20. Having heard the submissions on both sides at a considerable length, and having carefully perused the relevant case papers which were made available to us at the time of arguments, in the light of the relevant rules as well as the decisions relied upon by the learned Counsel on either side, the question for consideration is whether the promotion has been rightly denied to the petitioners herein?

21. It is not unusual that a person entering into a particular service has an expectation that he or she will go higher in the hierarchy and denial thereof results invariably in litigation. The case at hand is no exception. It is not in dispute that the petitioners herein and the respondent Nos. 2 and 3 were working as Court Officers during the relevant point of time. The petitioners herein having entered into the cadre of Court Officers on 5.10.1990 and 11.10.1990 and the respondent Nos. 2 and 3 having entered into the said cadre of Court Officers on 14.11.1990 and 9.6.1993 respectively, the petitioners herein were placed above the respondents 1 and 2 in the memo issued by the respondent No. 1 at Annexure-A to the Writ Petition. Having regard to the relative ranking of the eligible Court Officers for the promotion to the posts of Assistant Registrars as per Annexure-A and the petitioners being placed above the respondents 2 and 3, they were seniors to the respondents 2 and 3 in the feeder cadre of Court Officers. Even otherwise, having entered into the cadre of Court Officers earlier to the respondents 2 and 3, the petitioners were certainly seniors to the respondent Nos. 2 and 3. Therefore we are unable to accept the contention of the respondent Nos. 2 and 3 that the petitioners herein were in no way seniors to respondents 2 and 3. It is needless to point out that it is the seniority in that cadre which has to be taken into consideration for the purpose of promotion to the next higher cadre. Therefore there could be no dispute that the petitioners 1 and 2 were seniors to respondents 2 and 3 in the feeder cadre of Court Officers for being considered for promotion to the next higher cadre of the Assistant Registrar. As provided under Rule 7 and Schedule III at serial No. 6 of the High Court of Karnataka Service (Conditions of Service and Recruitment) Rules, 1973, the method of recruitment for the post of Assistant Registrar is on the basis of seniority-cum-efficiency and on this ground, the respondent Nos. 2 and 3 are stated to have been promoted as Assistant Registrars. We have carefully perused the case papers which were made available to us at the time of the arguments by the learned High Court Government Advocate appearing for

the respondent No. 1 and we find that though the petitioners herein were considered to be seniors in the cadre of Court Officers from that of the respondents 2 and 3, the respondent 2 and 3 were given promotion or considered for promotion for the following reasons:

"I have interviewed all the eight eligible Court Officers for the two posts of Assistant Registrars. On considering their performance in the interview, Annual Confidential Reports, seniority, age, efficiency and on overall consideration, Sri Narasareddy and Sri Vijayaprabhakara are fit and suitable for promotion to the posts of Assistant Registrars. Therefore, they are promoted as Assistant Registrars."

22. From the above order of the promoting authority, it is not clear as to why the petitioners herein have been denied of promotion to the post of Assistant Registrar though they were undisputedly seniors to respondents 2 and 3. The reasons given in the above order would only say that on consideration of their performance in the interview, annual confidential reports, seniority, age, efficiency and on an overall consideration, the respondents 2 and 3 are found to be fit and suitable for promotion and accordingly, they are promoted as Assistant Registrars. There is nothing on record to show that the cases of these two petitioners were considered on their respective merit and that they were found to be unfit for promotion. On the other hand, it would appear as if it is only the cases of the respondents 2 and 3 that were considered and they were found to be fit and suitable for promotion and accordingly, they were promoted. That apart, Rule 7 and Schedule III at serial No. 6 of above said rules does not contemplate or prescribe the norm of calling for interview of the eligible officers to test their efficiency for promoting to the post of an Assistant Registrar. There appears to be no such specific criterion laid down under the said rule. It is no doubt true that a memo was issued as per Annexure-A to the petitioners herein and others calling them for interview and accordingly, the petitioners had attended the interview before the Hon'ble Chief Justice. But that by itself will not debar the petitioners from challenging the process promotion, if the same is not in accordance with law. When the relevant rule does not prescribe any such criterion of calling for interview of the eligible candidates from the post of feeder cadre of Court Officers, for the purpose of their promotion to the post of Assistant Registrar, would be contrary to the rules and it will be in clear violation of the prescribed procedure for the process of promotion. That apart, the reasons assigned in the order, as has been extracted above would show that apart from the seniority and the performance of the eligible candidates at the interview and as reflected in the Annual Confidential Reports, there are certain other criterions viz., the age etc., which has weighed with the authority concerned at the time of or in the process of promotion of Respondents 2 and 3 to the post of Assistant Registrar. Obviously for this reason, it was contended on behalf of the Respondents 2 and 3 that since they were to retire early and also in view of the fact that they have been denied of promotion at some other level, the competent authority thought it fit to promote them to the posts of Assistant Registrars, by

passing over the petitioners who will remain in service for many more years than the Respondent Nos. 2 and 3. As we have already stated, what was required to be considered for such promotion was only the seniority-cum-efficiency and if some other criterions have weighed with the promoting authority, then it will be in violation of the prescribed rules. Besides this, there is nothing discernible from the order made by the promoting authority as to why the petitioners herein were denied their promotion though they were admittedly seniors to R-2 and R-3 in the feeder cadre of Court Officers. In all services whether public or private, there is invariably a hierarchy of posts comprising of higher posts and lower posts. Promotion as understood under the service law jurisprudence is advancement in rank, grade or both and an employee has a fundamental right to be considered for promotions. When the recruitment for the post of Assistant Registrar is on the basis of seniority-cum-efficiency, greater emphasis is to be laid on the seniority though it is not a determinative factor for promotion. True, where the promotion is based on seniority-cum-efficiency, the petitioners cannot claim promotion as a matter of right by virtue of their seniority alone, but they cannot be passed over unless they are found to be unfit to discharge the duties of the higher post. Further while laying down the promotion policy or rule, it is always open to the employer to specify the area and parameter of weightage to be given in respect of seniority and merit separately. Here, the statutory rule governing the field does not prescribe the norm of calling for an interview of eligible candidates to determine the seniority-cum-efficiency for promotion to the post of Assistant Registrar. Likewise, it does not also prescribe that the promoting authority should take into consideration the age and other overall consideration, while considering the suitability or otherwise of promoting an officer from the post of Court Officer to that of the Assistant Registrar. The statutory rule being silent in the matter of calling for an interview, the 1st respondent could not have stipulated the norm of calling for interview, of eligible candidates as one of the criterions for the purpose of promotion to the post of Assistant Registrar. It was therefore impermissible for the 1st respondent to have stipulated the criteria of calling for interview of the eligible candidate including the petitioners herein to promote them to the post of Assistant Registrar, based on the principle of seniority-cum-efficiency. Besides this, when the basis for promotion is one of seniority-cum-efficiency, there could be no other criteria like age etc., and in the instant case, the other criterions being taken into consideration, it will be in violation of the prescribed rule. As we have already stated, every officer has a right to be considered for promotion under Article-16 of the Constitution to a higher post subject of course to eligibility when he or she is within the zone of consideration. But the question as to the manner in which his or her case is to be considered is a matter of considerable importance in service jurisprudence as it deals with fairness in the matter of consideration for promotion under Article 16 of the Constitution. In the instant case, we find that the process of promotion to the post of Assistant Registrar does not answer the test of fair consideration under Article 16 of the Constitution. It may be stated even at the cost of repetition that the right to be considered by the 1st respondent for promotion is a fundamental right

guaranteed under Article 16 of the Constitution to the petitioners. There is nothing on record to show that the petitioners are either ineligible or not in the zone of the consideration. While applying the principle of seniority-cum-efficiency for the purpose of promotion, what is required to be considered is inter se seniority of the employees who are eligible for consideration. Such seniority is normally determined on the basis of length of service in that cadre. Applying this test to the case at hand, we find that the petitioners herein were both seniors to the Respondents 2 and 3 in the feeder cadre of the Court Officers when they came under the zone of consideration of promotion. That being so, the seniority of the petitioners confers certain rights and the principle of seniority-cum-efficiency gives effect to such rights flowing from seniority. It cannot therefore be said that in the matter of promotion on the basis of seniority-cum-efficiency, seniority has no role to play. The criterion of seniority-cum-efficiency in the matter of promotion postulates that given the minimum necessary merit requisite for efficiency of administration, the senior, even though less meritorious, shall have priority and a comparative assessment of merit is not required to be made. For assessing the minimum necessary merit or efficiency, the competent authority can lay down the minimum standard that is required and also prescribe the mode of assessment of efficiency of the employee who is eligible for consideration for promotion. Such assessment can be made by assigning marks on the basis of appraisal of performance on the basis of service record and interview and prescribing the minimum marks which would entitle a person to be promoted on the basis of seniority-cum-efficiency. In the instant case the relevant rule governing the field does not prescribe that the mode of selection for promotion would be interview, age, etc., Even assuming that such selection made on the basis of interview and assessment of performance etc., is consistent with the criterion of Seniority-cum-efficiency, namely that given the necessary merit requisite for efficiency of administration, the senior though the less meritorious shall have priority. The said mode enables an assessment to be made about the minimum necessary merit requisite for efficiency of administration and it cannot be construed as importing assessment of comparative merit of the officers eligible for promotion. No doubt, calling for interview as one of the modes of assessment of efficiency of the employees can be resorted to but then the statutory rule should provide for the same. In this case, as we have already pointed out, the statutory rule does not prescribe the mode of selection for promotion would be interview. That being so, the assessment made on the basis of interview was clearly not permissible. That apart, the 1st respondent did not disclose any valid reasons for denying promotions to petitioners. When no reasons have been disclosed for denying promotion to the petitioners, the promotion of Respondents 2 and 3 ignoring the seniority of the petitioners would certainly violate Articles 14 and 16 of the Constitution. The petitioners were entitled for promotion when they were not declared unfit for promotion by the 1st respondent. The petitioners have certainly a right to have their case considered for promotion according to their turn. Apart from the fact that the method adopted for promoting the Respondents 2 and 3 was not the one

prescribed by the statutory rule, it appears that some other criteria have also weighed with the 1st respondent in the process of promotion of Respondents 2 and 3 to the posts of Assistant Registrars such as age etc., of the eligible candidates. When the rule does not prescribe mode of assessment of efficiency by interview of the eligible candidates, no such criteria could have been adopted by the promoting authority. May be that the holding of an interview is a well recognized method of the suitability or efficiency of a candidate for considering his case for promotion to the next higher post when it is based on seniority-cum-efficiency. But then the relevant rule dealing with the process of promotion should disclose such a norm being prescribed and that further such norm being adopted in the process of promotion should be disclosed and the candidates must be made aware of such criteria well in advance, as otherwise the process of promotion will not be considered as fair. It is not in dispute that the process of promotion to the post of Assistant Registrar is governed by the statutory rule and the said rule does not prescribe the norm of calling for interview. That being so, the process adopted for promotion being other than the one laid down under the prescribed rule, cannot be considered to be proper and correct. That apart, there is nothing on record to show as to what was the weightage given to the seniority and what was the weightage given for the performance of the candidates at the interview. The proceedings of the 1st respondent does not disclose any of these factors, and on the other hand, it is only vaguely stated therein that on considering their performance in the interview, Annual Confidential Reports, seniority, age, efficiency and on overall consideration, the respondents 2 and 3 were found suitable for promotion, and accordingly, they were promoted. The order promoting respondents 2 and 3 is therefore too general and it merely states vaguely that the performance of the candidates at the interview, Annual Confidential Reports, seniority, age, efficiency etc., have been considered, but does not reflect any such material which weighed with the 1st respondent to deny promotion to petitioners. Therefore the said decision itself is thus of no assistance to the Respondent Nos. 2 and 3 to show that the same is based upon relevant data and the relevant criteria. It is rather strange to note that the interviews of as many as 24 candidates were commenced at 4.15 p.m. and the order promoting the respondents 2 and 3 temporarily to the posts of Assistant Registrars came to be passed on the very same day. Therefore on the facts and in the circumstances of the case, it would appear that the decision of the 1st respondent in denying promotion to the petitioners to the posts of Assistant Registrars suffers from lack of consideration or application of mind to the relevant criteria for promotion to the post of the Assistant Registrar and the relevant data if not from extraneous consideration. The said decision is therefore clearly violative of Articles 14 and 16 of the Constitution. As we have already indicated, the decision of the 1st respondent does not disclose any basis or give any reasons for denying promotion to the petitioners herein, though they were eligible candidates coming under the zone of being considered for promotion. That is to say, the basis and/or reasons for denying promotion to the petitioners could not be spelt from the decision. Apart from the fact that the petitioners

herein being seniors to the respondents 2 and 3, even the entries made in the Annual Confidential Reports of the Respondents 2 and 3 are in no way better than that of the petitioners herein. There appears to be no adverse remarks in the Annual Confidential Report of the petitioners herein at any rate for a period preceding three years to the date of consideration of their promotion. In so far as calling for interview and assessing the performance of eligible candidates at the time of the interview is concerned, apart from the fact that it appears to have been held within a short spell of time, there are no records of the proceedings of the interview. We have been specifically informed or told that no such proceedings were recorded by the 1st respondent. That means, there are no records to show as to how the performance of each officer was assessed at the time of interview. When no records of interview have been maintained, legal malice can be inferred and malice in law can also be a ground for judicial review. It was sought to be contended on behalf of the respondents that there was no such requirement to record any reason or minutes of the proceedings of the interview. This is in our opinion preposterous and the argument that it is not obligatory to record the proceedings of the interview or to disclose any reason why an officer was not proposed to be promoted when he or she is in the zone of promotion and when his or her service records do not disclose any adverse remarks, may not sound proper. The said contention of the respondents runs counter to Articles 14 and 16 of the Constitution. In this connection, a reference may be made to a decision of the Hon"ble Supreme Court in the case of STATE OF MAHARASHTRA V. PRATAPSINGH DAYAL SINGH RAJPUR, 1998 AIR SCW 839 wherein it is observed as under:

"7. It is contended by the learned Counsel for the appellants that it was not necessary either to record any reason in the Minutes of the Full Court meeting or to disclose those reasons to the Court on the judicial side. This is in our Opinion, preposterous as the argument that it is not obligatory for the High Court to disclose reason why an officer was not proposed to be promoted when he had already been selected, runs counter to the spirit of Articles 14 and 16 of the Constitution. At least this argument was not expected from a high judicial body like the Bombay High Court which is before us today as a litigant. The Division Bench was, in our opinion, right in recording the findings extracted above and we see no reason to differ."

22 (A). A reference may also be made to a decision of the Hon"ble Supreme Court in the case of B.V. SIVAIAH V. K. ADDANKI BABU(Supra) wherein it is held as under:

"The criterion of "seniority-cum-merit" in the matter of promotion postulates that given the minimum necessary merit requisite for efficiency of administration the senior, even though less meritorious, shall have priority and a comparative assessment of merit is not required to be made. For assessing the minimum necessary merit the competent authority can lay down the minimum standard that is required and also prescribe the mode of assessment of merit of the

employee who is eligible for consideration for promotion. Such assessment can be made by assigning marks on the basis of appraisal of performance on the basis of service record and interview and prescribing the minimum marks which would entitle a person to be promoted on the basis of seniority-cum-merit."

23. We find that in this case the above said criterion has not been followed by the 1st respondent in making the impugned promotions of the respondents 2 and 3. As we have already stated, though the relevant rule does not lend support to the contention that the criterion of seniority-cum-efficiency involves assessment of comparative merit by means of an interview for the purpose of promotion, the interview was stated to have been held, but strangely no minutes of interview were recorded. That is to say, the proceedings of the interview were not recorded. Assuming that the requirement that such selection shall be made on the basis of interview and assessment of Annual Confidential Reports for the preceding years is consistent with the criterion of seniority-cum-efficiency, as has been explained in the case of *State of Kerala and Another Vs. N.M. Thomas and Others*, that given the necessary merit requisite for efficiency of administration, the senior though less meritorious shall have priority and the said mode enables an assessment to be made about minimum necessary merit requisite for efficiency of administration and it cannot be construed as importing assessment of comparative merit of the officers eligible for promotion. There is nothing on record to show how the performance of each of the eligible candidates was assessed at the time of the interview after calling the eligible officers for interview in accordance with their seniority. Admittedly no marks were awarded in the interview nor the proceedings of the interview have been recorded. That being so, there is nothing on record to show how their performance was assessed and what weightage was given to the petitioners and others in the interview. Also there is nothing on record to show whether the performance appraisal comprises of matters like dimension of work, general intelligence, job knowledge, initiative, resourcefulness etc. As we have already stated, there was nothing adverse in the service records of the petitioners. Under the circumstances, we are constrained to observe that the process of promotion lacked fairness and transparency. Non-recording of the proceedings of assessment of the performance at the time of the interview would certainly vitiate the interview, moreso when there are no adverse remarks in the Annual Confidential Reports of the petitioners who were also called for interview and the promotion was proposed to be made on the basis of the interview among the eligible candidates. In the absence of any records of the interview, it is rather difficult to conceive that the performance of the Respondents 2 and 3 was better than that of the petitioners at the time of the interview. That is to say, there is nothing to show that efficiency-wise, the performance of the Respondents 2 and 3 was in any way better than that of the petitioners in the interview. The evaluation of each of the candidates who attended the interview, has not been recorded and in the absence of which, it is rather difficult to say that the promoting authority has evaluated each candidate and found that the petitioners

cannot be placed higher than that of the Respondents 2 and 3 in the matter of efficiency though they were seniors to them. No doubt in this case, the assessment has been made by the Hon''ble Chief Justice and in the normal course, it is to be presumed that the assessment was fair and impartial. But when a challenge has been made with regard to the process of promotion as being not in accordance with the prescribed rules, the records should reflect that the cases of the petitioners have been considered as has been required under the rules. In this case, we find that the cases of the petitioners have not been considered properly so as to pass over their promotions. In this connection, a reference may be made to a decision of the Hon''ble Supreme Court in the case of H.C. Puttaswamy and Ors. v. The Hon''ble Chief Justice of Karnataka High Court and others reported in 1991 Su(2) SCC 421 wherein it is observed as under:

"The methodology adopted by the Chief Justice was manifestly wrong and deviation from law which the High Court has to protect and preserve. The Judiciary is the custodian of Constitutional principles which are essential to the maintenance of the rule of law. It is the vehicle for the protection of a set of values which are integral part of our Social and political philosophy. Judges are the most visible actors in the administration of justice. The administration of justice is just not deciding a disputed case. It involves great deal more than that. Any realistic analysis of the administration of justice in the Courts must also take into account the totality of judges behaviour and their administrative roles. They may appear to be only minor aspects of the administrative of justice, but collectively they are not trivial. They constitute a substantial part of the mosaic which represents the ordinary man's perception of what the courts are and how the judges go about their work. The Chief Justice is the prime force in the High Court. The object of Article 229 is to secure independence of the High Court which is not possible unless the authority to appoint supporting staff with complete control over them is vested in the Chief Justice but the Chief Justice or the Administrative Judge is not an absolute ruler. He must operate in clean world of law, not in the neighbourhood of sordid atmosphere. He has a duty to ensure that in carrying out the administrative functions, he is actuated by same principles and values as those of the Court he is serving. He must be confined to constitutional ethos and traditions of his callings."

24. It is not in dispute that the recruitment to the post of Assistant Registrar is governed by the statutory rules called High Court of Karnataka Service(Conditions of Service and Recruitment) Rules 1973. Rule 7 and Schedule III at item No. 6 which deals with it says by promotion on the basis of seniority-cum-efficiency from the cadres of Section Officers, Court Officers and Senior Judgment Writer. The said method of recruitment does not prescribe the assessment at an interview based on the performance of the eligible candidates at viva voce test. That being so, the assessment at an interview of the performance of the candidates cannot be a criterion in the process of promotion to the post of Assistant Registrar. Furthermore when the statutory rule itself does

not prescribe any much criteria for promotion, the mere fact that the petitioners herein have attended the interview alongwith others will not absolve or disqualify them from challenging the process of promotion based on such criteria which is contrary to and in violation of the statutory rule. There cannot be estoppel when the recruitment is contrary to the statutory rule. Therefore the appropriate authority could not have taken into consideration the assessment made at the interview and so also the age etc. of the eligible candidates which are not the criterias fixed for promoting to the post of the Assistant Registrar under the statutory rule. That is to say, the purported assessment made at the interview, the age of the eligible candidates etc., could not have been taken into consideration while promoting the Court Officers to the post of the Assistant Registrar under the statutory rule. In the fact situation, the promotion made by the authority is said to be improper and incorrect inasmuch as the criteria laid down in Rule 7 and Schedule III at item No. 6 has not been applied to promote the Court Officers to the post of Assistant Registrars and some other criterions, which have not been specified in the rule have been applied. Even assuming that the efficiency of an eligible candidate is to be considered, it could have been made on the basis of the assessment made in the relevant Annual Confidential Reports which needs approval of the Hon''ble Chief Justice. Even assuming that the Hon''ble Chief Justice has competency and jurisdiction to call the eligible candidates for interview and assess their performance, the records of the interview ought to have been maintained and relative assessment made in respect of each candidate should be discernible from such records to avoid criticism of the process of promotion being arbitrary. In the absence of any such materials, the promotion made can be said to be arbitrary and illegal. While recruiting the officer to the post of Assistant Registrar, the authority must scrupulously follow the statutory rule operating in the field. It may be that for assessment of efficiency, it can lay down its procedure, but it should be reflected in the statutory rule and such procedure adopted must be free from any criticism of being arbitrary. Therefore we are of the view that a clear case of breach of statutory rule has been made out in this case. In this connection, a reference may be made to a decision of the Hon''ble Supreme Court in the case of *INDER PARKASH GUPTA V. STATE OF JAMMU AND KASHMIR* AIR 2004 SCW 2737, wherein it is concluded as under:

"30. Rue 8 does not speak any viva voce test. It, however, appears that so far as academic qualification is concerned, the same had been laid in the advertisement and the requirement of M.D.(Medical/General Medical), MCRF, FRCP, Specialty Board of Internal Medicine (USA) or an equivalent qualification of the subject. So far as the teaching experience is concerned, two years" experience as Registrar/ Tutor/ Demonstrator/Tutor or a Senior Resident in the discipline of medicine in a recognized teaching medical institution recognized by the Medical Council of India was specified.

31. So far as the teaching experience is concerned, the commission awarded marks to those who had even less than two years" experience. One mark was to

be awarded for every full year of experience subject to a total of 5 marks. Sports/ Games distinction in NCC activities had also been taken into consideration which were not the criterion prescribed under the 1979 Rules. There is nothing to show that any mark was awarded in relation to the previous record of work, if any.

32. In its judgment, the High Court did notice that in awarding marks for minimum qualification prescribed for the post, the Commission did not award any mark at all to some respondents. It, therefore, for all intent and purport had considered the candidatures of the candidates only on the basis of 10 marks, if the marks awarded for sports/games and NCC activities are excluded as they are beyond the purview of Rule 8, and as it fixed 100 marks for viva voce test, a clear case of breach of the statutory Rules had been made out. While the appellant had been given minimum marks in the viva test, the other respondents who even did not fulfil the requisite criterion were awarded higher marks.

33. The High Court, in our opinion, was correct in holding that Rule 51 providing for 100 marks for viva voce test against 40 for other criterias is contrary to law laid down by this Court.

34. See *Union of India and Another Vs. N. Chandrasekharan and Another*, ; *Indian Airlines Corporation Vs. Capt. K.C. Shukla and Others*, , *Anzar Ahmed Vs. State of Bihar and others*, and *Satpal and Ors. v. State of Haryana and Ors.* (1995 Su(1) SCC 206).

35. It is true that for allocation of marks for viva voce test, no hard and fast rule of universal application which would meet the requirements of all cases can be laid down. However, when allocation of such mark is made with an intention which is capable of being abused or misused in its exercise, it is liable to be struck down as ultra vires Article 14 of the Constitution of India.

36. See *Jasvinder Singh and Others Vs. State of Jammu & Kashmir and Others*, , *Vijay Syal and Another Vs. State of Punjab and Others*, .

37. It is also trite that when there is recruitment of consultation, in absence of any statutory procedure, the competent authority may follow its own procedure subject to the conditions that the same is not hit by Article 14 of the Constitution of India.

38. See *Chairman and M.D., B.P.L. Ltd. Vs. S.P. Gururaja and Others*, .

39. We would proceed on the assumption that the commission was entitled to not only ask the candidates to appear before it for the purpose of verification of record, certificates of the candidates and other documents as regards qualification, experience etc, but could also take viva voce test. But mark allotted therefore should indisputably be within a reasonable limit. Having regard to Rule 8 of 1979 Rules higher marks for viva voce test could not have been allotted as has rightly been observed by the High Court. The Rules must, therefore, be suitably recast."

25. Though Rule 7 and Schedule III at item No. 6 in the matter of promotion to the post of Assistant Registrar gives a wide power to the selecting authority, but it is a well settled principle of service jurisprudence that the authority will lay down the criteria for grant of promotion to its officers as otherwise it becomes unguided and arbitrary power. The relevant criteria or the eligibility norms for such promotion must be discernible from the statutory rules which governs the field. The criteria for grant of such promotion and the eligibility norms therefore must be defined by the authority on a realistic basis wherefor a system to choose the best available talent or the most efficient to man the post of Assistant Registrar is to be devised. That is to say, what are the criterias to test the efficiency, whether it is based on the remarks made in the Annual Confidential Reports or on the basis of the assessment to be made at the time of the interview and what other criterias that could be adopted to test the efficiency must be defined by the authority. There must be some standard pattern of eligibility norms for such promotions and the norms prescribed should not be flexible in nature so as to vary from person to person. It should not be in the nature of a devise to promote certain officers and not to promote certain officers. In the instant case, we find that apart from the fact that the process of promotion was contrary to the statutory rule, some other criterias which are alien or not relevant to the rule of efficiency appears to have crept in. Therefore having given our anxious consideration to the entire matter in issue, we find that the notification issued at Annexure-B in so far as it pertains to promoting the Respondents 2 and 3 passing over the seniority of the petitioners herein cannot be sustained in law.

26. Under the circumstances, therefore, we have no other alternative except to quash the impugned notification at Annexure-B in so far as it relates to the promotion of Respondents 2 and 3 to the posts of Assistant Registrars, and to direct the 1st respondent to consider the cases of the petitioners for their promotion to the posts of Assistant Registrars with effect from the date of their juniors viz., the Respondents 2 and 3, who have been only temporarily promoted to the posts of Assistant Registrars.

27. In the result, therefore, these two Writ Petitions filed by the petitioners in W.P. Nos. 45490-91 /2003 are hereby partly allowed. The impugned notification at Annexure- B of the 1st respondent in so far as it relates to the promotion of the Respondents 2 and 3 to the posts of Assistant Registrars, is hereby quashed. The 1st respondent is hereby directed to consider the cases of the petitioners herein for their promotion to the posts of Assistant Registrars with effect from the date of their juniors viz., the Respondents 2 and 3, who have been promoted temporarily to the posts of Assistant Registrars, and if they are found fit for promotion, to grant them all the consequential benefits. The Writ Petitions are accordingly allowed to the extent and in the manner as indicated above. But in the circumstances of the case, there is no order as to costs. We hope and trust that the needful will be done as expeditiously as possible and without being prejudiced in any way by the act of the petitioners in approaching this Court by

challenging the Notification of the 1st respondent at Annexure-B.